THE Attourney's Academy:

BEING

The Manner of Proceedings in all his Majesties Courts of RECORD at *Westminster*;

And in all other Courts either of Law or Equity; reviewed and very much enlarged.

Together with the usuall and ordinary Fees of Officers and Ministers of the said Courts, and other Fees for Writs and Proceedings therein.

Whereunto is added a perfect TABLE for the finding out the principall matters.

Collected by *Thomas Powell*, and published for the benefit of all his Majesties Subjects.

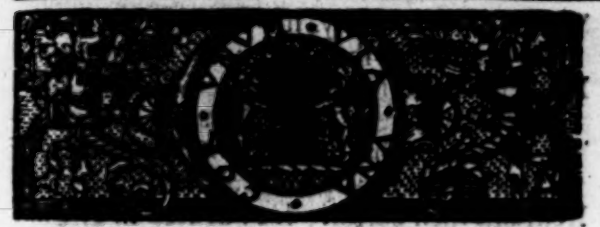
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Attorney's Academy.

Rec. Oct. 8, 1879



To the Right Reverend in God, Right Honourable in his King, Right Serviceable in his Countrey, and Right able in himſelfe, JOHN Lord Biſhop of *Lincolne*, and Lord Keeper of the Great Seale of ENGLAND.

I See the Storme a coming; whether ſhall I
Seek covert in the mountain, or the valley?
Or elſe betake me to the ſilent ſtreame,
And let the tempeſt burſt, and ſplit its ſpleane
Upon the earth? So I be ſafe and ſaven,
While I ſhall ride at Anchor in the Haven.
Alas! the fatall Siſterhood (in ſport)
Will there betray thee: For within the Port,
Shipwrack hath diſappointed and diſgrac't
The Proverb of *Long look't for comes at laſt.*
Then will I daunch into the very Maine,
To ſee if *Neptune*'s deity will deyne
To fence and fling his Trident on my head,
By power whereof all ſtormes are ſcattered:

Which, if he doe deny, my comfort is,
My Shipwrack ſhall have noble Witneſſes.
I ſinke not in a Ditch, nor by the Shore,
But die, and lie at *Neptune's* Palace doore.
'Tis thou alone that bear'ſt the Triple Mace,
Canſt, in the very ſpeed of all their chace,
Reſtraine their purſuit; doe but keep in awe
Theſe nimble, neate *Nereides* of the Law;
Charge *Æolus* (as he does honour thee)
He doe not diſ-imbulke his checks at me.
I have done nothing to offend thy Traine,
Raviſh't *Anemone* (as the Poets feigne;)
Nor ſought to rob the Sea-gods bed of Corall,
I mean Laws myſteries, (for that's the Moral.)
If this be ſo, vouchſafe me thy protection,
That I may bring this Work unto perfection.
Then will I ſing thy Fortune and thy Fame,
And prove that *Williams* from the *Trojans* came:
Shew where his Anceſtors long ſince did build
A Seat, which hitherto their Name hath fill'd.
Now may that Name and Honour ne're expire,
But in a melting Firmament of Fire.

Latum

In manus Fidiſſimi:

THOMAS POWELL.

To



TO

TRUE NOBILITY AND TRY'D LEARNING,

BEHOLDEN

To no Mountaine for his Eminence, nor Supportment for his Height,

FRANCIS Lord *VERULAM*,

and Viſcount S^t. *Albanes.*

O Give me leave to pull the Curtaine by,
That clouds thy worth in ſuch obſcurity;
Good *Seneca*, ſtay but a while thy bleeding,
T' accept what I received at thy reading:
Here I preſent it in a ſolemne ſtraine,
And thus I pluckt the Curtaine back againe.

The ſame

THOMAS POWELL.



T. N.

In Commendations of this WORK.

IT Is good, 'tis common good, what would you more?
It will be more good, when there is more ſtore.

—— *Pueri, Sacer locus eſt, extra meite.*

TO

TO THE READER.

Sta, Lege, Plora,
Pro me (precor) ora.



GENTLE READER, thy Religion and Zeale to common good, may suspend thy frowne, but not scourge me: For, if thou beest but a temperate man in this age, wherein the Planets themselves are so extremely distempered, the Aire is sick of their disease, and the lower bodies doe all complaine, and are shaken with the same feaver; thy calme and pliable constitution shall make thee subject to their indispositions:

Unlesse thou be superlative and superstitious in the faith and profession of Publick Weale, thou shalt be too too enervated to meet the privy malice of those who are onely studious of private profit, or to make up me and my good meaning to the generall advantage.

Thou must easily conceive, that my aime is not levelled at any lucrative End: mark, seeing no endeavour can afford a more mercilesse and inadvertent returne then this: to thinke, the pity of my poore Country-men did impresse and send me forth in the first ranke, to be exposed unto the worst danger; whilst, with all other difficulties in the encounter, I have received with the one hand, and cast away with the other.

I have ever held it more honour and happinesse to hurle my selfe headlong into the flaming Temple, then to ensafe me in the midst of thy most pure Schismonites.

1. Indeed I must confesse, That my selfe was the most unworthy and unable of many to undergoe this Taske:

2. That I have waded thus farre, without calling of those of the mystery to my guidance.

3. It may be, that I have stept besides the common Causway, and trespassed pedibus ambulando upon some mens Inclosure.

4. Perhaps I have sometimes erred, and mis-set the Needle of my Compasse.

5. And admit I have not travelled so farre as the Seas offered Passage and Passe-port unto me.

1. All this is easily answered; for you must first understand, That the necessity of the Voyage did inforce me, when in all this age past before us, no one (how able soever) would undergoe the discovery. None would, or will preferre the Profession of Navigation before the purchase of the present.

2. I knew not whom to trust or call to counsell, lest I should betray the whole Voyage.

3. Beyond the Pole of property, I care not in what streame my Keele leaves her direct impression.

4. Beyond the Line, the old Compasse is to be laid by, and the new one is to be used.

5. I have travelled as farre as the Victuall and Tackle, which I was able to provide with my slender Purse, would beare me: and it shall be held unanswerable in all well-affected English Sea-farers, worthy the hire and,

charge,

charges [illegible] I have in this leading Discovery set forth whereunto my [illegible] to the [illegible] perfect [illegible] The [illegible] the Officers and [illegible] Clients; which [illegible] unlearned [illegible] endowments of [illegible] science, and inraged competition speaks them farre more worthy.

For my faults of deficience, I am not ashamed to invite the supply of those who have the advantages of breeding in their particular Offices on their sides, if they will ever do it.

For my faults of Insufficience, I doe not blush at them: Barnardus non videt omnia. He that knowes most in the practise of the Lawes, knowes most how impossible it is with the single quality of any one man living, to reduce the infinite differing parcels of this Accompt [illegible] at the first collation or calculation thereof.

For my Printers faults of all kindes, I give him kindly to [illegible]

Would you have me now to leave all undone, because some parts cannot be done to perfection at the first?

Will you blame the for those few imperfect quidlibets, without whose company and fellowship, so many usefull quodlibets with which the ensuing Treatise is

 furced,

farced, had never been able to dedicate so tedious a Journey.

Surely, whatsoever you be that shall see it, I must tell you, that the million mistakers will repute and report you for a second Alexander, *not the Conqueror, but the Copper-Smith; not fitnesse for triumph, but for Trade. Not* Alexander, *who in his godlinesse would be worshipped as a god himselfe, but* Alexander *who in his leather apron would have the very Puppits which his hand taught speak, draw an adoration and reverence among the people.*

Good Alexander, *doe not feare thy trading,*
Pursue me not, though thou deny thine aiding:
I aske but aide of Patience and of Time,
To frame and finish this poore worke of mine;
To make, to mend, to perfect, and to polish,
What Alexanders *wisedome thinks so foolish.*

To the rest, I rest

As jealous of your loves,

as zealous of your liking,



The course of proceedings in his Majesties Court of *Common Pleas*.

THe first writ and ground of a suit commenced is an Originall: If it bee an action of debt, you are to draw your *pracipe* for an Originall thus; *videlicet*,

Pracipe Thome Barnes *nuper de London generoso*, *quod reddat* Henrico Wendoe x. l' *Orig. ret. tres. Trin. Cap. ret: octab. Michaelis.* London ss.

If you would have two, or three, or foure defendants (for more you cannot have in one Originall) then draw it up thus;

Pracipe T. B. *nuper de L. generoso, quod reddat* W.H. xx.l'. *Pracipe* A.B. *nuper de L. husbandman, quod reddat eidem* xx. l'. *Pracipe* H. W. *nuper de L. yeom', quod red' eidem* xx .l'. *Pracipe* B.W. *nuper de Wels in Com' Somerset, husbandman, & Anne uxor' ejus, quod reddat eidem* x. l'. *Orig. ret, tres Trin. Cap. returnable Oct' Mich'.* London ss.

If the action of debt bee upon a ſpecialtie under ſeale, as bond, bill, &c. then you muſt draw up your *præcipe* with an *alias dictus*, thus;

London ſſ. *Præcipe* A. B. *nuper de L. generoſ. alius dictus* A. B. as in the bond, *literatim*, obſerving the very points and daſhes, onely altering the caſe to make it true Latin, *quod reddat* W. H. x. l'.

If the defendant bee ſued upon two bonds, then two *alias dictus*; if upon three bonds, then three *alias dictus*, &c. then, *quod reddat* in one ſumme what the ſeverall penalties of the bonds come to: upon every draught of a *præcipe* ſet down the returne of the *originall* and *caplas*, and Attournies name under.

You muſt alwayes in your *præcipe*, which is the inſtructions for the originall and meane proceſſe, ſet downe the Towne and County where the defendant lives, with his addition, as gentleman, huſbandman, or the like: but upon a bond or bill, ever in the *alias dictus* (which is the ſecond addition) as it is in the bond or bill *verbatim*. And if you ſue upon an Indenture, the *alias dictus* muſt bee *literatim*, as it is in the Indenture.

Though you may have foure defendants in one writ, yet there may not be above one plaintiffe, unleſſe it be a joint action.

In an action of treſpaſſe, draw up your *præcipe* thus;

London ſſ. *Si* R. B. *fec' &c. tunc pone &c.* W. L. *nuper de L. generoſ. de placito, quare vi & armis clauſum & domum ipſius* R. *apud* L. *fregit, & alia enormia ei intulit, ad grave damnum ipſius* R. *& contra pacem noſtram, &c.*

If

If it bee an action of assault and battery, draw it up thus:

Si H. B. *fec' &c. tunc pone &c.* W. H. *nuper de* L. *yeom', de placito quare vi & armis in ipsum* H. *apud* L. *insult' fecit, & ipsum verberavit, vulneravit, & malè tract avit ita quod de vita ejus desperabatur. Et alia enormia ei intulit, ad grave dampnum ipsius* H. *& contra pacem nostram, & habeat', &c.* London ss.

If it bee an action of accompt, charging the defendant as Receiver, draw it up thus; *videlicet,*

Præcipe L. M. *nuper de W. in Com' prædicto, generoso, quod reddat* W. B. *rationabilem comp' suum de tempore quo fuit receptor denariorum ipsius* W. *& habeas &c.* Wiltsh. ss.

If you charge him as Bailiffe; then, *de tempore quo fuit Ballivus ipsius* W. *in* W. *& habeas &c.*

If you charge him as both Bailiffe and Receiver; then thus, *de tempore quo fuit Ballivus suus in* B. *& Receptor denariorum ipsius* W. *& habeas &c.*

If it be in an action of detinue, thus;

Præcipe L. M. *nuper de Wels, in Comitatu prædicto, yeom', quod reddat* W. B. *unam equam,* or *unam vaccam, precii* x. l' *quam ei injustè detinet, &c.* Somers. ss.

If it be in an action of annuity, thus;

Præcipe A. L. *nuper de W. in Comitatu prædicto, yeom', quod reddat* B. H. x. l' *quæ ei arretro sunt de quodam annuo redditu* xl. l' *quas ei debet, & injustè detinet, &c.* Cornub. ss.

If it be an action of covenant, draw it up thus;

Præcipe R. B. *nuper de L. in Civ' Ha. Ald'* R. B. *&c.* (in English *literatim*, as in the Indenture) *ad respondendum* N. G. *de placito quod teneat ei conventionem* Cornub. ss.

nem inter eos factam ſecundum vim, formam, & effectum, quarundam Indenturarum inde inter eos confect' &c.

In an *ejectione firme*, thus;

Ad reſpondendum H. W. *de placito quare vi & armis unum meſuagium & viginti acras terræ cum pertinentiis in L. quæ* T. B. *præfat'* H. W. *dimiſit ad terminum qui nondum præteriit intravit, & ipſum à firma ſua prædicta ejecit: Et alia enormia &c. ad grave dampnum &c. & contra pacem, &c.*

Every *Capias* to arreſt muſt have an originall to warrant it. When you have drawne up a *præcipe* of the action you ſue, enter it firſt into your originall booke, then take it in paper to the Curſitor of that County where the action is laid to make the originall by; which, when it is ſealed, you are to carry to the Philazer of the ſame County to make a *Capias* after you have returned your originall, thus;

Pleg. de Proſ. { Joh'es Doo.
Ric'us Roo.

In the middle, *Infran.* A. B. *nihil habet in Balliva noſtra per quod attach' poteſt.*

Lower end, *Reſponſ.* A. C. & R. L. *vic.*

If it be in debt, you muſt ſay, *per quod ſum' poteſt.*

If it be laid in a County, as Wiltes, Somerſet, &c. there is but one Sheriffe, &c. but London hath two.

Note, that the returne of the *Capias* is alwaies 15. dayes or more after the returne of the originall; and the *capias* is *teſte* of the returne of the originall: As if a man write to mee in Trinity vacation for a *capias* returnable

returnable *Octab' Mich'*, I make my originall returnable *tres Trin. teste* of *craſtino Trin.* and my *Capias* returnable *Oct. Mich. teste* of *tres Trin.* The *Originall* is carried into the Philazer, and the *Capias* you give or ſend to the Sheriffe for the arreſting of the partie.

Note, that all manner of perſoniall actions, where no poſſeſſion is awarded, as Debt, Detinue, Annuity, Accompt, &c. are tranſitory, and may bee laid in what County the plaintiffes Attorney pleaſeth; but actions of *ejectione firmæ* and Waſte, are locall. So muſt treſpaſſe be tryed in that County where the treſpaſſe is committed.

If the plaintiffe deſire to have his action tryed in London, and the defendant lives in a forraine County, as in Somerſet, you muſt ſue out your Proceſſe thus; An Attorney writes to mee in Trinity vacation for a meane Proceſſe to arreſt a man in Somerſet, and would have the action laid in London, where hee would have it tryed; my originall muſt be returnable *Craſtino Trinitatis*, which, when the Curſitor of London hath made, I fetch from him, and returne, and carry it to the Philazer of London, who makes a *capias* returnable *tres Trin. teste* of *craſtino Trin.* then the *capias* being ſealed and returned, the Philazer makes a *teſtat' cap'*, returneable *Oct' Mich'* into the County where the defendant dwels, or may bee taken.

It is now the common courſe when an Attorney ſends to his Clerke for a *capias*, he immediately ſends him downe the *capias*, and ſues out the originall within a convenient time after, though the originall be ſuppoſed to be ſued out before.

There

There is a common courſe of ſuing to an outlawry, beſides the arreſt upon a common Proceſſe; and this ſuing to an outlawry cannot bee done under the ſpace of three termes; and then you muſt be wary of taking the benefit of the former terme; as thus, A man gives mee a bond in Eaſter vacation, to ſue the defendants to an outlawry in London: I proceed thus; My originall is returnable *quindena Paſche*, the *capias*, *teſte* of *quindena Paſche*, returnable *quinque Paſche*; *alias capias*, *teſte* of *quinque Paſche*, returnable *craſtin. Trin. plures capias*, *teſte* of *craſtino Trin.* returnable *tres Trin.* the Exigent and Proclamation returnable *menſe Mich.* both of the ſame *teſte* and returne.

So obſerve the dependance of theſe ſeverall Proceſſes, how the ſecond is *teſte* of the returne of the firſt, the third of the returne of the ſecond, and the fourth of the returne of the third, the fifth being the exigent and Proclamation, *teſte* of the returne of the fourth being the *plures*, and betwixt the *teſte* and returne of each Proceſſe, full 15. dayes or more; you file the originall, returning a *nihil* thereupon, with the Philazer of London, who makes the *capias* and *alias capias*, whereupon a *non eſt inventus* being returned by your ſelfe of courſe, you carry them back againe under ſeale to the Philazer to file, who thereupon makes a *plures capias*: upon which returning, as before a *non eſt inventus*, you take it under ſeale to the Exigenter of London, who makes thereupon an exigent and proclamation; which proclamation you give or ſend to the Sheriffe of the County where the defendant lives, any where within England or Wales; (for no County Palatine or Liberty whatſoever, privi-

ledgeth

ledgeth from the Proceſſe of an outlawry) and you carry the Exigent to one of the Counters where the Sheriffes of London keepe their Office, where they are proclaimed upon five ſeverall Hufting dayes, and the party comming not in by the *quint' exactus*, is returned outlawed: if the defendant in the meane time make his peace with the plaintife, you may withdraw the writ, paying for a *retraxit*. As I ſaid before, you muſt be carefull of taking the benefit of the precedent Terme in ſuing to an outlawry; as thus, If ſeven dayes be paſt of Trinity Terme, you cannot take the benefit of Eaſter terme precedent by making your two firſt writs, *originall* and *capias* returneable, the one *quindena Paſche*, the other *quinque Paſche*; for you muſt put them to the Curſitor to making within ſeven dayes after the beginning of Trinity Terme; which benefit if you had taken, the party would have comen in outlawed in *Michaelmas* Terme following, which is the third Terme after that commenc'd; ſo if ſeven dayes bee paſt of *Hilary* Terme before you put your *originall* to making, you loſe the benefit of *Michaelmas* Terme precedent, which if you had taken, the party defendant would have comen in outlawed in *Eaſter* Terme following; which two Termes of *Eaſter* and *Michaelmas* are the beſt to ſue to an outlawry. If the *originall* bee returneable *Craſtino Triū* the action being laid in London, the Exigent will come in in *Hilary* Terme following; ſo it would not if the action had been in the Country.

You ſhall know, that moſt lay their actions upon ſuing to an outlawry in London, becauſe they come in there outlawed ſooner; for thus, Betwixt the laſt

of

of the Exigent and *returne*, there muſt be five County Court dayes, at which dayes the party defendant is proclaimed to come in and tender himſelfe: now in London they call them huſts, or husting dayes, which huſts are ſhorter then the County dayes in the Country, ſo that the party comes in ſooner outlawed.

If it fall out, that between the *teſte* and *returne* of the Exigent, five Huſts or County dayes are not paſt, the plaintiffes Atturney muſt get an *allocat'*.

Now, If the defendant, upon the returne of the Exigent ſhall appeare by a *Superſedeas*, hee ſhall not need to put in ſpeciall baile, though it bee a great debt; whereas, if hee had beene arreſted upon a meane Proceſſe, hee ſhould have beene compelled to it; or (if hee ſuffer himſelfe to be outlawed) hee muſt reverſe it, and put in ſpeciall baile; if the debt bee above xx. l', and the plaintiffe ſtand upon it, then upon his appearance by *ſuperſedeas*, the plaintiffes Atturney is to make ready his declaration, and to tender it to the defendants Atturney; and if it bee an action of debt upon ſpecialty, as bond or bill under ſeale, hee is to ſhew the defendants Atturney the ſpecialtie it ſelfe, that ſo hee may take notice of the witneſſes names, which hee writes in the margent of the paper book, for ſatisfaction of himſelfe and his Client.

And alſo to ſee if it appeare upon the ſpecialtie what money hath been paid, or if there bee a *memorandum*, that unleſſe ſuch a thing bee done, the bond was delivered as a ſcrowle, or any other materiall thing for his clients advantage.

&c. If the plaintiffe ſue and declare as Executor, hee muſt ſhew the Will enabling him thereunto; or

as

as Administrator, the letters of administration, which is his warrant; for so hee sayes in his declaration, *Et profert hic in Cur' tam scriptum prædictum &c. quam, literas testamentarias* : or, *quam literas administratorias, &c.*

Now, though the plaintiffes Attorney hath not any of these to shew, yet if hee will set his hand that the defendants Attorney shall see the speciality or Will, &c. before hee plead, the defendants Attorney may take and accept it, without damage to his Client.

So, If the defendants Attorney shall take an imperfect copie with spaces, hee shall not bee compelled to plead till his declaration bee perfected by the plaintiffes Attorney, and upon the taking he shall imparle of course.

Now if the defendant appeare by *supersedeas* in due time to an Exigent, and the plaintiffe doth not make ready and tender a declaration within sixe or eight dayes after, the defendant giving him a rule in the bill of *pleas* in one of the Prothonotaries Offices, and no declaration comen in within the time limited by that rule, the defendant may nonsuit the plaintiffe; that is, the defendants Attorney may enter up a *non pros*, and get costs signed by the *Prothonotary* in whole Office the cause depends; and so make out execution for the costs against the plaintiffe, his body, or goods, as hee will.

If the defendant appeare by *supersedeas*, and will not take a declaration, the plaintiffes Attorney may enter up Judgement against him *per nihil dicit*; the generall rule is, upon an *Imparlance*, the defendant

is to plead within nine or ten dayes of the Terme following.

If the defendant doe appeare, and takes a declaration, and pleads not within due time, the plaintiffes Atturney may goe to the Prothonotary in whose Office the cause is, and get him signe costs, and so enter up Judgement *per nihil dicit* upon the rule, and make forth what execution hee pleaseth, the plaintiffes Atturney, as before, giving him a rule to plead in the bill of *pleas* in the Office.

So, If the defendant shall plead a generall issue, as *non assumpsit* to case, *nil debet per patriam* to an action of debt, &c. and put his hand to the plaintiffes Atturneyes *Docquit* book: if now the plaintiffes Atturney will not joyne issue, and deliver a copie thereof to the defendants Atturney, hee may, after a rule given in the bill of *pleas*, *nonsuit* the plaintiffe, and costs being signed by the *Prothonotary*, may enter up Judgement, *quia non juravit in existum, nec alterius prosecut' br'e suum pradict'*; which Judgement is to be entred up specially: and all this is matter of course, without motion in Court.

But where there is a speciall action brought, as a *quare impedit*, or *dower*, &c. and the defendant plead, and the plaintiffe replyes not within due time, the defendant is not to enter up Judgement of course, but to move the Court to give a peremptory day to the plaintiffe to reply, without longer delay; at which day, if hee put not in his replication, Judgement shall be awarded against him, *prodefect' replicationis*, which Judgement is entred up specially.

So, If a declaration be delivered in a *quare impedit*, and

and the defendant pleads not the Terme following, within due time, the plaintiffe cannot enter up Judgement of course, as in ordinary actions; but hee must move the Court to give a day to the defendant to plead peremptorily, or *nil judic'*; and now, if hee doe not plead within the time, the plaintiffe may enter up Judgement: and the like proceedings are in all speciall actions, as Dower, Waste, Prohibitions, *ejectione firme, &c.*

When the plaintiffes Attorney delivers a declaration in the Terme, and the Terme following would amend the same in some materiall point: this cannot bee done without hee move the Court, who will order that hee shall amend the same, and also that the plaintiffe shall for his amendment pay the defendant some costs.

When a *Capias* is awarded from the *Philazer* for the arrest of a man, if the party bee arrested, and puts in no baile for his appearance, the plaintiffe may bring his action on the case against the Sheriffe to whom the writ was directed; but being arrested, if the Sheriffe take bond for his appearance, and at the returne of the *Capias*, no Attorney doth appeare with the *Philazer*, then you are to call for the returne of the *Capias* to the Sheriffe, who will returne a *cepi corp'*, and no appearance being made, you are to carry the *cepi corpus* to the *Philazer*, who thereupon doth amerce the Sheriffe 40. s. and makes out an *hab' corpus* to the Sheriffe, to whom you are to deliver it under seale: and if the defendant appeare not by the returne of the *hab' corpus*, a *cepi* being returned thereupon, you are to take it to the *Philazer*, who will make out an *alias*

hab' corpus, and amerce the Sheriffe 4. l'. ſo that the Sheriffe hath no way to helpe himſelfe, but to ſue the defendant upon his baile bond; or he may aſſigne over the baile bond to the plaintiffe, who may put the bond in ſuit, and ſo you ſhall proſecute the defendant, and put him to charges till hee doe appeare; which when hee hath done, you are to make ready your declaration, &c.

If the Sheriffe, who did ſo arreſt the defendant, be out of his Office before hee returne your ſaid *hab' corpus*, and the defendant appeareth not, you are to ſue forth a *diſtring' ſuper vic'*.

Now it is the courſe of this Court, if the debt bee 20. l'or above, the plaintiffe may ſtand upon ſpeciall baile, and therefore if the defendant bee arreſted upon a debt of 20. l'. or above, or upon an action of the caſe, where above 20. l' damages are laid, though hee did put in good baile for his appearance, and would appeare by an Atturney; yet you may goe on with your amerciaments againſt the Sheriffe, and take out *habeas corpus, & alias habeas corpus in infinitum*, till the defendant ſhall come with the plaintiffes Atturney, with two ſufficient ſureties, ſuch as the plaintiffes Atturney ſhall accept of; and they, together with the Philazer, goe before one of the Judges, and there they two ſureties are bound in a ſumme of money, that if the defendant be condemned in the ſuit againſt him, hee ſhall pay the debt or damages recovered againſt him, or render his body to priſon, a *memorandum* whereof the Philazer makes: ſo that now if the defendant bee caſt in the ſuit, and judgement againſt him, if the baile ſhall at the returne of the execution bring

bring in the body of the defendant, who is ready to render himſelfe to priſon, then is the baile diſcharged.

But if the defendant doe not render himſelfe to priſon, nor the baile bring in his body, then the plaintiffe may ſue out a *cap' ad ſat'* againſt the defendant, and *non eſt inventus* being returned thereupon, and the ſame *cap' ad ſat'* being filed with the *Cuſtos brev'*, there ſhall iſſue forth *ſcire fac'* againſt the bail, and they thereby compelled to ſatisfie the debt, and coſts awarded againſt him for whom they are bail.

If a man be arreſted at a common perſons ſuit, hee is to enter his appearance with the Philazer whence the *Capias* iſſued; and alſo let him give notice to the plaintiffes Atturney thereof if he can: but if a common perſon bee arreſted by attachment of priviledge, at an Atturnies ſuit, he is to enter the appearance in the Remembrance in the Prothonotaries Office, where the plaintiffe enters: but the plaintiffe may refuſe to accept of common appearance, and ſo amerce the Sheriffe, and have *habeas corpus* after *habeas corpus*, till the defendant ſhall put in ſpeciall baile; and then his Atturney muſt goe to the Office where the plaintiffe enters, and get one of the Prothonotaries Clerks to goe with him before a Judge, and there to take the *manucapt'* upon the Remembrance; and there they acknowledge, that, if the defendant bee caſt in the ſuit, they will pay the debt and damages awarded againſt him, or bring in his body: And note, that upon putting in of all bailes, the plaintiffes Atturney ſhould bee preſent, and to that purpoſe the defendants Atturney is to give him notice; or he may after except againſt the baile,

baile, and ſhewing good cauſe of their inſufficiency, he ſhall get better.

This is uſed in the Kꝭ. Bench, where the firſt writ is no record; but this cannot bee good in the Com' Pleas; for then the *teſte* of the Originall would be before the cauſe of action, for which it would abate.

If a man have owing a great debt upon a bond, hee may arreſt the party before the money bee due, in caſe hee can make it appeare the party is about to run away, or hide himſelfe, or the like; and ſo ſtand upon ſpeciall baile.

And in ſuch caſes, where the debt is above 20. l'. as aforeſaid, if the defendant gives bond for his appearance, and at the day doth appeare with the Philazer by his Atturney, and the Sheriffe returns a *capi corpus*, upon which the plaintiffe, not accepting of the appearance, hath an *habeas corpus*: whereupon the Sheriffe being amerced, aſsignes over his baile bond to the plaintiffe to ſue, who puts it in ſuit, and the defendant in the baile bond being arreſted, the plaintiffe declares thereupon, if the defendant ſhall now plead *comparuit ad diem*, and the plaintiffe reply, *quod null. tiel record'*, this plea of the defendants is not good, becauſe the plaintiffe ſhould have had ſpeciall baile, and onely common baile was offered; ſo that *non comparuit*, and the iſſue ſhall goe for the plaintiffe.

When an Atturney ſues any man by attachment of priviledge, hee may ſtand upon ſpeciall baile, though the debt bee under 20. l'. becauſe of his priviledge: otherwiſe it is if hee ſue by originall.

If a man be arreſted in the vacation upon a *clauſum fregit*, and the terme following the plaintiffe declares in caſe ſpeciall, the defendant ſhall imparle over of courſe.

But if the writ whereupon the defendant is arreſted bee ſpeciall, in caſe, returnable the firſt returne of the Terme

Terme following, the defendant ſhall anſwer the ſame Terme by the courſe of the Court.

Generally, the ſame Terme the defendant appears and takes a declaration, hee ſhall imparle till the next Terme, except in ſome particular caſes.

And note, the defendant may bee arreſted upon a *clauſum fregit*, and the plaintiffe may declare in caſe or treſpaſſe, and ſometimes in debt, if the debt exceeds not xl.l'.

But if the party be arreſted upon a writ in debt, the plaintiffe cannot declare in treſpaſſe, or caſe, or any other action but in debt only.

A man is arreſted upon a meane proceſſe, his Attorney ought to enter his appearance with the Philazer whence the writ iſſued.

When the defendant hath appeared, and the plaintiffe declares in debt upon a bond or bill under ſeale, the defendants Attorney being preſſed for anſwer, and having no inſtructions from his client to pleade, may the ſame Terme after imparlance had, give a judgement by *non ſum informat'*, with a *ceſſet executio* till the next Terme after.

If the defendant plead generall pleas or iſſues, as to an action of debt *nil debet per patriam*, or to debt upon a bond or bill penall, *per minas* or *per dures*, or *non eſt factum*, or conditions performed, or the like; to an action on the caſe, the generall iſſue, *non aſſumpſit*, or *non cul'* to an action for ſcandalous words, &c. theſe common pleas or iſſues, putting his hand to the plaintiffes Attorneys *Docquit* book, hee will draw them up for the defendants Attorney of courſe, and deliver copies of iſſues thereof to him.

But

But if the defendant plead ſpecially, hee is therto bring it to the plaintiffes Atturney under a Serjeants hand, and if the plaintiffe reply ſpecially with a travers or the like: the replication is alſo to bee under a Serjeants hand.

So if the defendant demurre to a declaration, hee is to put it in under a Serjeants hand, and the plaintiffe is to put in his joynder in demurrer under a Serjeants hand; and upon every demurrer the Judges argue after the record read, all of them having books of demurrer; and whether hath moſt voices, hee ſhall have Judgement.

If the defendant to a bond or bill pleade a tender of the money, the defendant muſt bring in his money in Court with his plea, for ſo hee ſayes, *quod ſemper hucuſque paratus fuit, & adhuc paratus exiſtit ad ſolvendum, &c.* if the plaintiffe reply hereto, and iſſue joyned, and a triall, and the defendant proves his tender true, hee ſhall not pay coſts, though hee pay the debt.

But note, the defendant ſhall never plead a tender after an imparlance.

The plaintiffes Atturney muſt bee carefull upon all his iſſues, judgements, and exigents to put in warrants of Atturney.

When the defendant hath pleaded to iſſue, and a copie of the iſſue delivered him, if the action bee laid in London, the plaintiffes Atturney, if hee intend a triall, ought to give warning to the defendants Atturney thereof eight dayes before, that ſo hee may provide himſelfe, his Councell, his witneſſes, and ſeverall proofes for his clients cauſe.

Generally,

Generally, a Jury ſhall come out of that place where the action is laid for the triall, unleſſe it be removed by pleading; as where the action upon a bond is laid in London, and the defendant pleads conditions performed, the money paid in Wels in Somerſet, according to the condition, here the *venire* ſhall not ariſe in London, but in Wels, *in Com'* Somerſet, and thither ſhall the Record goe downe and be tried.

In like manner, when an action upon the caſe is brought in London againſt a Carrier for loſing goods delivered him, which hee undertook to deliver at the ſigne of the *George* in Taunton, *in Comitatu* Somerſet, in conſideration of money payd him in hand, or that ſhould be payd; to this the defendant pleads ſpecially, *quod ſecundum promiſsionem, & aſſumption' bona & catalla quer' deliberavit ad uſum quer' apud le George in Taunton, in Com' Somerſet*: In this caſe the *venire* ſhall ariſe *de viſn' de Taunt' in Com' Somerſet*, & there the record ſhall be tried. But had the defendant in this caſe pleaded the generall iſſue *non aſſumpſit*, it ſhould have been tried in London, where the action was laid.

So, If an action upon the Statute bee brought againſt an Hundred, for a robbery done within that Hundred, the *venire* ſhall not ariſe in that Hundred where the fact was done; (for then they ſhould bee both defendants, and Judges of their owne cauſe, which is againſt common reaſon) but the *venire* ſhall ariſe in *Hundredo proximo adjacente*, and to this purpoſe the *nuncij* muſt bee awarded ſpecially upon the role; and this is worthy your obſervation.

When iſſue is joyned, if the defendant be of kin to the Sheriffe either by bloud or marriage, the plaintiffe

tiffe may pray the *venire fac'* may bee directed to the Coroners; and if the defendant agree thereto, it ſhall be accordingly: this muſt be ſpecially awarded upon the iſſue role; and in the awarding it muſt bee ſet downe, and derived how the Sheriffe is of kin, and then is the *venire fac'* directed to the Coroners; and this is called a challenge to the array.

And note, when you make a challenge to the Jury, it muſt bee after they are called, and before they bee ſworn; for afterwards this challenge comes too late.

If juſt at triall at the Aſſiſes in the Countrey, the Jury fill not at calling of them, the plaintiffes Attorney may crave a *decem tales de circumſtantibus*, ten the like of thoſe that bee ſtanding by, to fill up the Jury, or a *tales* of leſſe number; if but two or one bee wanting, a *tales* may bee craved, and will be granted by the Judge; all which *tales de circumſtantibus* muſt bee entred upon the returne of the *poſtea*, together with the judgement upon the iſſue roll.

But if it be at the *common Pleas* Barre, hee may not crave a *tales de circumſtantibus*, but a *tales* onely; the firſt onely is a *decem tales* at the barre, the ſecond an *octo tales* if the *decem tales* did not fill; ſo from *octo* to *quinque*, and from *quinque* to *duo tales* hee muſt deſcend till the Jury bee filled. After iſſue joyned and entered, the plaintiffe may ſue forth a *venire fac'* to trie it, or elſe continue it over for a Terme or two, or more if hee will.

And upon the plaintiffes default, after the firſt Terme, the defendants Attorney may bring the cauſe to tryall by *venire fac' per proviſo*; and the ſame Term in a Replevin.

Upon

Upon triall in Guildhall London, if the triall be before my Lords laſt ſitting for the Terme, and a verdict for the plaintiffe foure dayes after the returne of the *habeas corpora*, the plaintiffes Attorney may call for the returne of the *poſtea* of my Lords Aſſociate; if it paſſe for the plaintiffe, foure dayes are given to the defendant to move in arreſt of Judgement; but if the verdict paſſe for the defendant, his Attorney may call for the returne of the *poſtea* the morrow after the return of the *habeas corpora*, and carry the ſame to the Prothonotary in whoſe Office the cauſe depends, who ſignes coſts upon the *poſtea*; and then if the defendant live in another County, if the plaintiffe take forth execution againſt his body, you are firſt to make a *capias* into London, bearing *teſte* from the returne of the *habeas corpora*, or after, returnable fifteene dayes after at leaſt; upon which *capias* you returning a *non eſt inventus*, you carry it under ſeale to the *Cuſtos brevium*, paying 4.d. for the filing thereof *poſt diem*: and when the returne of this *capias* is paſt, the plaintiffes Attorney may take forth a *teſtat' ca' ſa'* againſt the body of the defendant, into the County where the defendant lives.

In like manner upon this verdict the plaintiffes Attorney may take forth a *fieri fac'* into London firſt, which being thus returned, *ſcil. infra nominat' def. nulla habet bona ſeu catalla in balliva noſtra, per quod dcbm' & dampna predicta, aut aliquam inde parcellam fieri fac' poſſumus*; a *teſtat' fi' fa'* may bee awarded into the County where the defendant lives, againſt his goods, when the returne of this firſt *fi' fa'* is paſt.

When Judgement is ſigned by the Prothonotary,

the plaintiffes Atturney muſt carry the *poſtea* to the Clerke of the Judgements in that Office, to whom it doth belong to make forth execution.

But the plaintiffe may have an *elegit*, or ſeverall *elegits* immediately after Judgement is ſigned, into the County or Counties where the defendants lands doe lie.

If a tryall be in London the laſt ſitting of my Lord Chiefe Juſtice, and a verdict, no Judgement can bee upon that verdict untill the Terme following.

When iſſue is joyned, and a copie of the iſſue delivered to the defendants Attorney, as the manner is, the triall being at the Aſſiſes in the Country, the plaintiffes Atturney muſt be carefull to ſee the iſſue rightly entered, and his record truly engroſſed, without the leaſt miſtake, and then hee muſt make forth a *venire fac'*; in caſe hee doth not enter his owne cauſes and make his owne writs, let him make uſe of an honeſt and able Clerke upon whom hee may depend; I ſay, he muſt make a *venire fac'*, and bee very carefull how hee awardeth the *venire* where the action is laid, and whence the Jury ſhall come to try it: If it bee at the Aſſiſes in *Trinity* Vacation, his *venire fac'* is returnable *tres Trin'* teſted of *craſtin' Trin'*; which *venire fac'* he carries, ſigned by the Prothonotary, and under ſeale, to the Sheriffe of the County where the record is to bee tryed, who returnes a Jury of 24. which being returned, he carries to the *habeas corpora* Office, and there leaves and files, who thereupon makes an *habeas corpora* returnable in *oct' Mich.* which you muſt call for, and ſeale, and deliver to the Sheriffe for triall at the Aſſiſes, who will returne it, and make a warrant

warrant to ſummon the Jury; then you muſt take the *hab' corp'*, and the Juries names, being filed to the backſide of the writ, together with the record, and deliver them to the Clarke of the Aſſiſes, who will call the Jury, when the Record ſhall bee tryed at the Aſſiſes; againſt which time the plaintiffes Atturney muſt bee carefull to have all things in a readineſſe, his Councell fully inſtructed, and his witneſſes preſent, whom hee muſt ſerve with a *ſub pœna*; whereupon, if they doe not appeare, an action of debt upon the Statute lies: his Record being truely engroſſed by himſelfe or his Clarke, hee muſt ſee examined by the Prothonotary, in whoſe Office the cauſe is; then he goes to the Office of *niſi prius*, where the Clark of the Treaſury or his deputy ſignes it; then the Clarke of that County where the cauſe is in the ſame Office examines the Jurata, and makes up the Record; then you goe to my Lord chiefe Juſtice his man, who keeps the ſeale, and ſeales it for you.

So, your Record being now ready with your *habeas corpora*, your Copie of the iſſue, and your *ſub pœna* for witneſſes, and having fully inſtructed your Councell, you are now provided againſt the triall.

At the Aſſiſes, if ſome materiall witneſſe bee not there, or the beſt part of your evidence wanting, or if there want any materiall thing which may conduce to your Clients good, your beſt courſe will bee to bee nonſuite, ſo that then paying coſts, you may begin againe: or the plaintiffe may be nonſuit after full evidence, and ſo hee may try it againe.

Now, as I ſaid, when the Jury is in calling, and before they are ſworne, if either party will challenge, they

they muſt now ſpeake, and the Judge will admit of ſome that ſtand by to make up the number; for, as I ſaid, after they are ſworne, a challenge comes too late, and will not bee admitted.

Now, after verdict at the Aſſiſes, no Judgement is ſigned thereupon till foure dayes be paſt of the Terme following; for the courſe is, foure dayes are given by the Court *ex gratia* for the other party againſt whom the verdict paſſed, to move in arreſt of judgement; if none within that time move for the ſtaying of the *poſtea*, you are to call for the returne thereof to the Clarke of the Aſſiſes, who will deliver it you returned, which you having in your cuſtody, muſt carry to the Prothonotary in whoſe Office the cauſe is, who ſignes thereupon full coſts; then are you to take it to the Clarke of the judgements of that Office, who enters up judgement thereupon, and makes forth what execution you beſpeake of him, a *ca' ſa'* againſt the body, a *fi' fa'* againſt his goods, or an *elegit* againſt his lands.

When you carry your *poſtea* to bee ſigned by the Prothonotary, you are to make out a bill of coſts and charges expended in this cauſe, if the Prothonotary require it, who thereupon will aſſeſſe the coſts accordingly.

When a verdict is paſſed, and judgement ſigned and entred, and execution gone forth, 't is now too late to move in arreſt of judgement; but the defendant may bring a writ of errour, and thereupon if the parties body or goods be taken, he may have a *ſuperſedeas* upon the writ of errour for diſcharge; the courſe whereof I 'll ſhow anon.

Note,

Note, that in judgements by *non sum informat*, *nihil dic'*, or *cogn' actionem*, in trespasse, case, battery, &c. there are two judgements, and it will bee time enough to move in arrest of judgement after the writ of inquirie is gone downe and returned, to stay the filing thereof.

Now let us goe back where wee left; If a man bee sued to an *exigent*, and doth not appeare at or before the returne of the *exigent* by *supersedeas*, the plaintiffes Attorney is to call for the returne of the *exigent* at one of the Counters, if it bee laid in London; if in the Countrey, of the Sheriffe of the County, who returning the defendant outlawed, delivers you the *exigent*; you are likewise to call for the returne of the proclamation; which *exigent* the plaintiffes Attorney is to carry to the outlawry Office, where hee files it, and thereupon a *cap' ut' is* made generall, against his body only; or speciall, against his body, goods and lands.

And now the defendant cannot appeare, but hee must reverse the outlawry, and put in speciall baile, if the debt bee above 20. l'. in case the plaintiffes Attorney will stand upon it.

Note, that if the debt exceed 40. l'. you pay 6. s. 8. d. fine to the Kings use to the Cursitor, if the debt bee 200. l'. 10. s. fine, and so proportionably *in infinitum*.

When the defendant is outlawed in a suit, hee must reverse the outlawry, and appeare upon a new *originall*; if the new *originall* be put to making to the Cursitor, within a yeer and a day after the first *originall*, whereupon the outlawry is grounded, then it is

a *fine*

a *finem fecit*, and no new fine is paid, though the debt be above 40.l'. but if it be above a yeere and a day, a new fine is paid upon the ſecond *originall*.

When a man is outlawed, hee is diſabled to ſue, or take the benefit of the Law as other the Kings ſubjects, ſo the word *utlagatus* implies, *quaſi extra legem poſitus*, that is, put out of the Law: ſo that while hee ſtands outlawed, hee is utterly diſabled to ſue an action; and of this his diſability all men ſhall take advantage whom he ſues, by pleading the outlawry againſt him, which plea ſhall ſtop his proceedings till he hath reverſed it, and then he is *rectus in Cur'*.

When any man pleads an outlawry in diſability of the plaintiffe, and it bee denyed, the defendant ſhall have day to bring it in, and then hee muſt ſhew forth the record of the outlawry, that is, the *cap' utl'* under ſeale, which he hath from the outlawry Office.

If an Executor or Adminiſtrator ſueth any action, a plea of outlawry to the plaintiffe ſhall not diſable him, becauſe the ſuit is *in auter droit*, that is, in the right of the Teſtator, or Inteſtate.

And by the ſame reaſon a Maior and Commonalty ſhall maintaine their action, though the Maior bee outlawed.

The party outlawed forfeiteth all his goods and chattels to the King, and any man may ſue forth a *cap' utl'* againſt him.

If hee bee outlawed in felony, all his lands with his goods are forfeited.

Note, if a man be outlawed in Cheſter, Durham, or Lancaſter, which are Counties Palatine, to plead, this ſhal not diſable the plaintiffe in any Court in Weſtm'.

The

The courſe of reverſing an outlawry in Court without a writ of errour: As where a man is outlawed before judgement or after, and would reverſe this outlawry, the defendants Atturney muſt get a copie of the *exigent*; then he goes to the outlawry Office, and there hee receives a note of direction how to find it at the *Cuſtos brevium*, where hee is to ſearch, and when he findes the *exigent*, he muſt beſpeake a copie thereof of one who ſits there for that purpoſe; which when hee hath, hee muſt ſee narrowly to it if hee can finde any errour, as the inſufficient returne of the *exigent*, the omiſſion therein of any materiall word, or a word therein thats not ſignificant, or want of form, or a word therein not truly written in the daſhes, or for want of a proclamation; all theſe are cauſes of reverſall: when hee hath found any of theſe, hee is to goe to the *Cuſtos brevium*, and beſpeake the bundle to be brought to the Hall the next day, and ſo the bundle being in Court, hee ſhewes to the Secondary or Prothonotary the errour upon the *exigent*, which is ſhewen to one of the Judges in Court: Afterwards the Prothonotary takes a note of the errour, and makes a certificate to the outlawry Office of the reverſall, which certificate being carryed to the outlawry Office, the Clarke of the outlawries markes the outlawry booke diſcharged; then is the reverſall drawne up in paper, and entred upon the role; and now is the party in *ſtatu quo prius*.

Note, this maner of reverſall in Court is the cheapeſt way to reverſe an outlawry.

Note, A man may reverſe an outlawry by pleading the generall pardon; which muſt thus be done: hee muſt ſue forth a ſpeciall *ſcire fac'*, which his Atturney muſt draw up, and make out the writ to the

Sheriffe, wherein is ſet forth, how that by ſuch a Statute all outlawries before that time are pardoned; which writ being delivered to the Sheriffe, and hee returning a *nichil*, his Atturney taking it out into one of the common Remembrances, and giving a rule thereupon, enters up the reverſall upon the roll, and now is the outlawry nullified: but note, no outlawries can be reverſed this way but what were before the time of ſuch generall pardon.

Note, that if the party outlawed his body or goods bee taken, before either can bee freed, the defendants Atturney muſt ſue out a writ of errour, and thereupon a *Superſedeas* of courſe; which being delivered to the Sheriffe, hee is upon ſight thereof to free and ſet at liberty body and goods, taking bond of the defendant to purſue his errour.

But the party ſtanding outlawed, and neither his perſon, lands, nor goods having beene taken or ſeiſed upon the outlawry, then this manner of reverſall in Court (as before) is ordinary.

The courſe of reverſing an outlawry by writ of errour is in this manner, When the defendant his body or goods are taken upon a *Cap' utlagat'*, if hee bee taken in the vacation time, his Atturney is to come to the Clarke of the errours, and if the action bee in debt above xx. l'. hee muſt put in ſpeciall baile, or his Atturney muſt undertake that baile ſhall be put in before he can have *ſuperſedeas* for the defendants diſcharge; and then the Clarke of the errours will make out a *ſuperſedeas* forthwith, which being delivered to the Sheriffe, if the party bee taken, his body or goods, hee is forthwith to diſcharge both: if the party bee

not

not taken, then hee is to forbeare, for this writ is a countermand to the execution.

When a man is outlawed, the plaintiffes Attorney may, if he will, take out a ſpeciall *cap' utlag'* againſt his lands, which being delivered to the Sheriffe, he is by vertue thereof to ſummon a Jury, and then the plaintiffes Attorney or ſome other muſt give in evidence to the Jury, what lands the def' hath, which the Jury finding, is accordingly returned in an inquiſition filed to the back-ſide of the writ by the Sheriffe, which writ, with the inquiſition, the Attorney carries to the outlawry Office, where hee files it, and hath thence a certificate engroſſed, which is a recitall of the returne of the writ, which certificate hee is to carry to ſome Clarke of the Exchequer to make thereupon a *levar' fac'* to ſeiſe the profits of thoſe lands ſo found into the Kings hands; of which lands the King grants a leaſe out of the Exchequer to the plaintiffe, if he will, the profits whereof hee ſhall receive till the defendant ſhall reverſe the outlawry at the common Law; which when hee hath reverſed, (the courſe whereof I ſhewed before) the defendants Attorney is to get a certificate thereof from the outlawry Office, and being ſhowne and pleaded into the Exchequer, there ſhall iſſue thence a *ſuperſedeas* to the Sheriffe, to ſurceaſe all proceedings againſt the parties lands, and a writ called an *Amoveas manum*, to free and diſcharge the parties lands, and what lands were ſeiſed into the Kings hands *ratione utlag'* are to bee reſtored: and now the party is *in ſtatu* as hee was before the outlawry.

When a man is outlawed after Judgement, this

kinde of outlawry cannot bee reverſed by the courſe of the Court without compoſition with the plaintiffe, and untill the plaintiffe hath acknowledged ſatisfaction upon record.

After reverſing of an outlawry before judgement, the defendant appearing, the plaintiffe is to give a declaration, and ſo they are to proceed legally.

A woman is not ſaid to bee *utlagata, id eſt, extra legem poſita*; but *waviata, id eſt*, left out, or not regarded, becauſe they are not ſworne to the Law: the outlawry of a woman is legally called *waviaria mulieris*, a woman outlawed is a waive: and therefore you ſay in your *exigent*, *Quouſque ſecundum legem & conſuetudinem regni noſtri Angliæ waviaretur*, and not *utlagaretur*, as it is againſt a man.

When a common perſon ſues an Atturney, hee cannot bee arreſted upon a *capias*, or other common proceſſe, in regard his being an Atturney priviledgeth him from arreſts: but the courſe is to file a bill againſt him, and draw a declaration, the copie whereof the Atturney muſt take, being tendred him, and ſet his hand to the bill for his appearance; and in caſe hee refuſeth to take a copie, and ſet his hand to the bill, the plaintiffes Atturney may call him in Court, and enter a fore-judger againſt him, and being forejudged, he loſeth the benefit of his Atturneyſhip, and then hee may bee arreſted as a common perſon: but the plaintiffes Atturney muſt bee ſure to tender him a declaration and bill for his hand in Terme time, elſe hee may refuſe the taking thereof after Terme.

After the Atturney hath accepted the declaration, and appeared to the bill, (which bill the plaintiffes Atturney

Atturney is to file the ſame terme at the *Cuſtos brev'*) if the plaintiffe require anſwer, the Atturney is to plead forthwith; for Atturnies are to anſwer *de die in diem*, becauſe they are intended to bee alwayes in Court: and if hee pleads not, the plaintiffes Atturney may enter up judgement againſt him, and the execution ſhall take hold of him without taking notice of his Atturneyſhip.

An Atturney may be ſued to an outlawry without any mention in the writ that he is an Atturney, and he is to appeare by *ſuperſedeas* upon the exigent, which hee is to put in with the Sheriffe who hath the exigent; otherwiſe, if hee bee outlawed, hee is liable to a *capias utlag'*; and if hee doe appeare, the plaintiffe declares againſt him as againſt a common perſon, without any mention that he is an Atturney.

If an Atturney arreſt a common perſon, it is by attachment of priviledge, and not by *capias*; and though the debt be under 20. l'. yet hee may ſtand upon ſpeciall baile.

When an Atturney arreſts a man by attachment of priviledge in debt, hee is to marke the writ thus, *quer' pet' bonos manucap'*, becauſe it doth not appeare what the debt is, being in the writ *de placito debiti'*; and by this marking of the writ, the Sheriffe is to take notice he requires good baile.

When an Atturney ſues forth an attachment of priviledge for arreſt, hee is to enter it in the Recovery remembrance, in the Office where hee enters, and to marke upon the remembrance *quer' pet' bonos manucap'* if he ſtand upon ſpeciall baile.

And an Atturney ſuing an action at his owne ſuit, is

is exempted from paying fees both in his proceſſe to arreſt, and proceſſe to the exigent, and in the ſeales of writs and entries; alſo hee may try a title *in ejectione firme*, if it concerne himſelfe, without paying fees; but if the title concerne another, hee ſhall not make him leſſee and plaintiffe in an *ejectione firme* to ſave his owne purſe by uſing his priviledge; and ſo it was adjudged *Paſcha* 13. *Car.*

An Atturney having Judgement againſt a common perſon ſhall not have full coſts ſigned by the Prothonotary thereupon, becauſe ſuing as an Atturney, hee is at little charges himſelfe; whereas a common perſon having a judgement againſt an Atturney, ſhall have full coſts.

Alſo an Atturney may chuſe to be elected any Officer, as Conſtable, Churchwarden, Collector, &c. and if the Pariſh where hee lives doe chuſe him, hee may ſue out his writ of priviledge, which ſhall diſcharge him.

Alſo if hee bee impleaded in any other Court but where hee is an Atturney, hee may bring his writ of priviledge, which ſhall bee obeyed.

If an Atturney ſhall ſue a man to the exigent, hee ſhall pay fine, if the debt exceed 40. l'. upon the originall, though it be at his own ſuit.

If an Atturney outlawes a man at his owne ſuit, if the debt exceed not 20. l'. the party ſhall not be compelled to put in ſpeciall baile; but otherwiſe it is when he ſues by attachment.

An execution, or any writ delivered to the Sheriffe, if the Sheriffe will not returne the writ in time, hee may give him a rule in the bill of Pleas of courſe,

under

under paine of 40. s. or the plaintiffe may move the Court for a paine of 5. l'. or 10. l'. or more.

If the Sheriffe now returne a *capi corpus*, and the defendant bee not in cuſtody, the plaintiffe may bring his action of debt againſt the Sheriffe for an eſcape, for ſo much money as the execution is for. If the Sheriffe returne *non eſt inventus*, whereas the plaintiffe can prove that the defendant was in the Sheriffes company after hee had the execution againſt him, or that any of his Bailiffes were in the defendants company, having a warrant againſt him for his arreſt upon the execution; in this caſe the plaintiffe may move the Court to amerce the Sheriffe for his falſe returne, or he may bring his action of debt againſt the Sheriffe upon an eſcape.

If the Sheriffe returne upon an execution a *tarde*, the execution muſt bee renewed, yet if the plaintiffe can make it appeare to the Court, that the Sheriffe had ſufficient time betwixt the deliverie of the execution and the returne thereof, the Sheriffe will bee amerced for his falſe returne.

If an execution bee directed *vic'* Somerſet, and the defendant lives within a Liberty, and the Sheriffe makes his warrant to the Bailiffe of the Liberty for the taking of the defendant, becauſe his owne Bailiffes cannot doe it; if the Sheriffe returne upon the execution a *Mandavit Ballivo qui ſibi nullum dedit reſponſum*, hereupon ſhall iſſue forth to the Sheriffe a *non omittas propter aliquam Libertatem, &c.* by vertue whereof the Sheriffe, or any of his owne Bailiffes ſhall enter into the Libertie, and make execution of the writ.

If

If the Sheriffe enter into a Liberty to execute a writ, not being a *non omitt'*, an action upon the caſe lies by the Bailiffe thereof; yet to execute a writ of inquiry, hee may ſummon a Jury thence; and though the Bailiffe returne the writ, the Sheriffe muſt put to his name.

If a man bee arreſted into the Sheriffes Court in Guild hall London, for a debt above 5 l'. the defendant may remove it by *habeas corp' cum cauſa*, and upon the removall hee muſt put in ſpeciall baile before a Judge, and ſuch baile as the plaintiffes Atturney ſhall accept of; and if he doe not, the plaintiffe may move the Judge for a *procedendo*, and ſo the cauſe is tranſmitted downe againe, where they proceed according to the courſe of the Court; and you muſt alwayes have a Judges hand to an *habeas corpus cum cauſa & procedendo*.

If you would charge a priſoner in the Fleet with a debt, you muſt have an *habeas corpus* to bring him to the barre while the Court ſits, and one of the Judges will aske him why hee payes not the debt, or whether hee hath baile ready; in default whereof, hee is committed againe to the Fleete, and now is hee charged therewith.

A man being in priſon in the Countrey, may remove himſelfe to the Fleete in London, if there bee a ſuit depending againſt him in the Common Pleas.

A man being ſued in a baſe Court in the Countrey for a debt above 40. s. the defendant may remove it to the Court of common Pleas by a writ of priviledge, or *habeas corpus cum cauſa*, and the defendant upon the removall, muſt put in bail above, or the plaintiffe

tiffe for want thereof may get a *procedendo*, and ſo remove it downe againe.

They remove them by *habeas corpus* out of the Countrey into the common Pleas, commonly to prevent a judgement or tryall in the Countrey: ſo an injunction out of the Courts of Chancery, Requeſts, and Wards ſtops a judgement or triall at the common Law.

If you have a judgement againſt a man, and ſuffer the judgement to continue without doing any thing therein by the ſpace of a yeere and a day, you muſt then, before you can take out execution, ſue out a *ſcire fac'*, which is a writ to give warning to the defendant, that hee ſhew cauſe by the returne hereof, why execution ſhould not goe forth againſt him, and the Sheriffe returning a *nihil*, or *ſcire feci* hereupon, preſently after the returne of the *ſcire fac'* is paſt, you are to give a rule in the remembrance, that unleſſe the defendant plead ſomething to this writ, *fiat execut' per default'*; for note, the defendant may appeare and plead to a *ſcire fac'* as a releaſe of all judgements, actions, and duties is a good plea; or the defendant may bring a writ of errour upon a *ſcire fac'*: now if hee appeare not before the rule is out, you are to enter the *ſcire fac'*, and the returne thereof by the Sheriffe, and judgement upon the *ſcire fac'*, and then you may take forth execution, which is an execution after a *ſcire fac'*.

In caſe a yeer and a day bee paſt after a judgement, and no execution ſued out, and the plaintiffe is enformed that the defendant is upon going beyond ſea, or otherwiſe to hide himſelfe: Now if hee ſhould

take forth a *ſcire fac'* againſt him, which is only to ſum-mon him, this cannot help him, but his beſt courſe will be to arreſt him upon a *capias*, and ſo to ſtand upon, and give notice to the Bailiffes for good bail, and ſo make it an action of debt upon the former judgement, &c.

In caſe the defendant die after judgement, then the plaintiffe ſues forth a *ſcire fac'* againſt the Executors or Adminiſtrators of the defendant, which *ſcire fac'* being returned, and no appearance thereto, execution goes out againſt the Executors of the goods of the Teſtator, and not of the Executor.

Note, you muſt have two *ſcire fac'* againſt an Executor or Adminiſtrator, before you can have execution; but if a *ſcire feci* be returned upon the firſt *ſcire fac'*, then there needs not another.

If the plaintiffe die after judgement and before execution, his Executors or Adminiſtrators ſhall have a *ſcire fac'*, and after an execution, as before.

Execution being gone forth againſt the Executors or Adminiſtrators, to bee levyed of the Teſtators goods remaining in their hands; if the Sheriffe returne upon the *fieri fac'* a *devaſtavit*, then *ſi fa' de bonis propriis*: and if the Sheriffe returne a *devaſtavit*, whereas *revera* the Executors have not waſted, an action on the caſe lies againſt the Sheriffe by the Executors for his falſe returne.

As was ſaid before, upon every triall at Aſſiſes, no *poſtea* is returned, or judgement given till foure dayes bee paſt of the Terme following, which are given *ex gratia Curiæ*, for the other party againſt whom the verdict paſſed to move in arreſt of judgement; and upon a motion, if good cauſe

bee

bee ſhewen by the Serjeant, as ſome materiall word left out in the declaration or pleading, or other manifeſt errour in the proceedings, the Court will order judgement to be ſtayed; as for example,

A man brings his action upon the caſe for ſcandalous words, and ſets forth in his Count, that there was a communication of a marriage betwixt the plaintiffe and one *Anne Aſhton*, and after a certaine agreement, ſo that a day was appointed for the ſolemnization thereof, in the meane time, by reaſon of theſe words ſpoken, ſhe withdrew her affection, and would not have him, they tending to his diſparagement, and ſo concludes in the declaration thus, *querum quidem verborum falſorum & ſcandaloſorum praetextu, idem* the plaintiffe *non ſolum in magnam infamiam & ſcandalum apud omnes ligeos Domini Regis, cum quibus ipſe commercium habuit incidit; verum etiam ipſe eandem* Annam *maritare non potuit, ſed in matrimonio copulari recuſavit, ad dampnum ipſius*, the plaintiffe, C. l'. now hee ſhould have ſaid, *ſed eadem Anna cum eadem* the plaintiffe, *in matrimonio copulari recuſavit*: and for this cauſe judgement was arreſted, *& quer' nihil cap' per breve.* Trin' 13. Car. Reg.

So upon a triall where a Noble man was defendant, a verdict paſſed againſt him; in the beginning of the Term following he moved in arreſt of judgement, for that there was not one Knight returned of the Jury: the Court hereupon ſtayed judgement, *& quer' nihil cap' per breve.* Paſch. 13. Car. Reg.

A man brings an action of caſe for theſe words, *Thou wert forſworne at the Councell of Yorke, and I'll have thy eares for't*; the defendant pleads not guilty: Trin' 13. Car.

a tryall went downe to the Affiſes, and a verdict paſſed for the plaintiffe. In the beginning of the Terme following, the defendant moved by a Seajeant in arreſt of judgement, that theſe words are not actionable, *Thou wert forſworne at the Councell of Yorke*; Why ſayes the Serjeant, hee might bee forſworne as hee ſtood by the Court, or in the Court privately, not being judicially called; indeed, had the words been, *Thou wert forſworne at the Councell of York, being produced as a witneſſe*, or in ſuch a cauſe, this had been ſtroog, and would have held; but where words carry a double conſtruction, the Law will take them *in mitiori ſenſu*, in the better ſenſe: and ſo it was debated by the Judges, and judgement was hereupon arreſted, *& quer' nihil capiat per breve, per totam Curiam*: 'Tis the defendant that moves in arreſt of judgement, and not the plaintiffe for the moſt part.

To ſay to a man, *Thou wert forſworne in the Court of Chancery, or Common Pleas, or Kings Bench*, will not hold, becauſe the words are too generall, and carry a double conſtruction; but to ſay, *Thou wert forſworne in an anſwer in the Chancery*, or *as a witneſſe in the Common Pleas*, this will carry it, for that hee comes to particulars.

To ſay to a man, *Thou wert forſworne* will not hold; or to ſay, *Thou wert forſworne in a Court Baron, in ſuch a cauſe*, will not lie, becauſe 'tis no Court of Record; but to ſay, *Thou wert forſworne in a cauſe in ſuch a Court*, which is a Court of Record, this will beare an action.

To ſay to a man, *Thou wert or art perjur'd*, this will hold without more words, for that this is ever intended

ded to bee forſworne in a Court of Record, and this word *perjur'd* carries a more notorious ſenſe; but to ſay, *Thou wert perjur'd at Pauls*, will not hold, for that a man cannot bee perjur'd there, and the words conſequent mitigate the former: but to ſay, *Thou wert perjur'd at Weſtminſter*, will lie; to ſay, *Thou wert forſworne at Weſtminſter* will not lie, *cauſa quâ ſupra.*

To ſay, *Thou art a thiefe, for thou ſtoleſt an Apple from mee*, this will not hold, becauſe the following words qualifie the former: but to ſay, *Thou art a thiefe, and ſtoleſt a ſilver cup, or an horſe*, this will hold.

To ſay to a man, *Thou art a murtherer*, this is too generall, and will not lie, for it may bee hee meant a murtherer of flies, or fowle, or beaſts, &c. and when words carry two ſenſes, as I ſaid, the Law will take them in the better ſenſe: but to ſay, *Thou art a murtherer, for thou killedſt ſuch a man*, if that man bee dead at the time of the words ſpoken, an action will very well lie. A Juſtice of peace recovered 800. l. damages in the Kings Bench for the like words in *Paſch.* 12. *Car.*

To ſay to a man, *Thou haſt the Poxe*, this will not lie, for it may be hee meant the ſmall Poxe: but to ſay, *Thou haſt the French Poxe* will hold. *Et ſic de ſimilibus.*

To call an Attorney a knave or cheater, if there were a *colloquium* of his Attorneyſhip, this will lie; to call a common perſon a knave will not hold.

In the drawing of actions upon the caſe for words, the Attorney for the plaintiffe muſt bee carefull and expert; as if a Merchant brings an action for calling him Banckrupt, hee muſt ſet forth in the Count, how hee

he hath been a Merchant ſo many yeeres, whereby he hath got great reputation and gaines, and alwayes carried himſelfe fairely and honeſtly, and ſo concludes, by reaſon of theſe words he is brought into ſhame and infamy, and his cuſtomers withdraw themſelves.

So, to call a Phyſician a Mountebanck will beare action, and the plaintiffe muſt lay in his count, that hee hath been a Phyſician ſo long, and thereby hath got credit and money for the maintenance of him and his family, and now his patients come not at him ſince theſe words were ſpoken.

The like is of an Attorney being called an Ambodexter, the declarations muſt bee well drawne, and the words well laid, or judgement may be arreſted.

Note this, thoſe words will beare action that hinder and ſcandalize a man in his Profeſſion, as to call a Merchant a Banckrupt, a Phyſician a Mountebanck, an Attorney an Ambodexter, or the like: To call a Lawyer or Phyſician a Banckrupt, will not beare action, or to call a Merchant a Mountebanck, or the like.

(Clarks that draw declarations and pleadings muſt bee diligent to furniſh themſelves with good Preſidents, whereby to make themſelves able that ſo they may goe upon ſure grounds.)

So, to call a maid a whore will lie, becauſe it hinders her of a good marriage, or to ſay ſhee had a Baſtard; but then the plaintiffe muſt averre that ſhe was to be married to ſuch a man, who upon the words ſpoken, withdrew his love.

A bond of 20.l. for the payment of 10.l. being declared upon, the defendant pleades ſpecially that the plain-

plaintiffe took 7. l. in ſatisfaction of the bond, to which the plaintiffe replies, and denyes; and iſſue being joyned, and a triall, a verdict was given for the defendant: now the plaintiffe moved in arreſt of Judgement for this cauſe; to plead 7. l. in ſatisfaction of 10. l. is not good, for one ſhall never pleade a leſſer ſumme in ſatisfaction of a greater; indeed, if hee had pleaded that hee had given ſome collaterall thing, as an horſe, or the like, in ſatisfaction of the bond, this had been good; but to plead 7. l. in ſatisfaction of 10. l. is not good, though the plaintiffe accepted it: Notwithſtanding, for that the plaintiffe tooke iſſue thereupon, and a tryall, and verdict, the Court would not ſtay Judgement. It ſeemes, the plaintiffe ſhould have demurred to the defendants plea.

A man brings an action of the caſe upon a promiſe for a conſideration, and layes the aſſumpcion *decimo Auguſt.* 1629. the defendant pleads the Statute of limitations, and doth not traverſe the day in the declaration, nor ſhewes when the cauſe of action was, to which plea the plaintiffe demurres, *& judicium pro quer'*: here was ill pleadings, for the defendant ſhould have traverſed the day of the promiſe, and ſhewed when the cauſe of action was, &c.

One ſues a man upon an award, and declares that the plaintiffe and defendant had willingly ſubmitted to the award of ſuch a man; if hee gave up the award by ſuch a time under hand and ſeale, then hee averres, that the arbitrator gave up the award under hand and ſeale at the time limited, omitting theſe words, *in ſcriptis*: To this the defendant demurres, and aſſignes the cauſe, *deliberavit arbitrium ſub ſigillo ſuo ſigilato*, without

without theſe words, *in ſcriptis*: upon the reading of the record, and opening thereof by Councell, the Court adjudged it good enough without theſe words, *in ſcriptis*, for that it doth neceſſarily imply it, to be in writing, and it cannot be without it.

If a man plead a feoffement, hee need not ſhew a livery and ſeiſon, becauſe a feoffement cannot be without; and neceſſary conſequences are implyed, *& ſic judic' pro quer'*.

The plaintiffe in an action of debt upon a bond had a verdict at the Aſſiſes, the firſt day of the Terme following the defendant dies, a motion was therefore made in arreſt of judgement, for that foure dayes are given of courſe to that purpoſe; but the Court would not ſtay judgement: Indeed, had this been an action of battery, treſpaſſe, or account, judgement had been ſtayed; yet note, the plaintiffe cannot in this caſe take forth execution preſently, without a *ſcire fac'* firſt againſt the Executors or Adminiſtrators: Had the defendant died before the Term, judgment would not have been entred up.

Judgement may alſo bee arreſted through indirect carriage of Attornies;

As when the defendant gives a warrant in time to his Attorney to pleade, and hee neglects to put in the plea, and ſo ſuffers judgement againſt him by default; Now if the defendant can make this appeare by oath, the Court upon a motion will ſtay judgement.

So, if an Attorney puts in a plea for his Client in time, and the other ſide, notwithſtanding the acceptance thereof, enters up judgement againſt him, upon a motion in Court judgement will bee vacated, *affi-*

davit

davit being made thereof, and the Attorney that entered judgement check'd and put out of the roll for his paines.

So, if the parties be upon a reference, or termes of agreement, and the other side depending, the reference and the agreement in agitation, shall now without notice given to the other partie, enter up judgement; this is not well done, and the Court upon a motion and *affidavit* made to this purpose, will make void the judgement, and the other side shall bee admitted to plead *de novo*.

So, if there bee an order by consent on both sides, and the other side will notwithstanding enter up judgement by default; if now the other side desire to plead, upon a motion judgement shall bee vacated, and a plea must be accepted.

But in these and such like cases, where judgement is surreptitiously obtained, when it is moved, if both sides be not present, the Judges use to referre the examination thereof to one of the Prothonotaries, and according to his certificate, so to vacate, or let the judgement stand: And sometimes when one side moves for the vacating of judgement, and that a plea may be accepted for a tryall, if judgement be vacated, the other side payes some costs, and so his plea is admitted; yet if the judgement bee indirectly and unduly gotten, hee shall pay no costs.

This hath been the course heretofore when judgement hath been surreptitiously and unduly gotten; but my Lord *Finch* and the rest of the Judges declared themselves that they would not so easily vacate judgements upon these termes hereafter, in respect, (say they)

they) judgements ought to bee of greater force and validity.

And if Attornies plead not in time according to their instructions, if it bee by default of Attornies, their Clients may bring their actions on the case against them, and take their remedy that way.

It were to bee wished Attornies would practise more fairely, and give rules legally, and call one to another for pleas and answers, and not to lie upon advantages, and snap up Judgements, as some doe, without feare or wit, whereby they both trouble the Court to undoe what they have so unduely done, and put their Clients to needlesse expences: whereas, if they should proceed fairely and deliberately, they might bring honour to the Court, reputation to themselves, and expedition to their Clients causes.

It is to bee observed, there bee many ignorant and meane Attornies; and their ignorance and shuffling causeth this undue practice: Indeed, none ought to be sworne Attornies but bred Clarkes in Offices, or such as have been foure or five yeeres with one of the Serjeants at Law, who have seene the proceedings and course of the Court; and if any broken tradesman, or the like, have got in (I cannot tell how) to bee an Attorney, upon information thereof to my Lord chiefe Justice, hee will be put out of the roll with shame enough, or turned over the Barre: indeed, such fellowes are a dishonour to the Law, and the Courts of Justice.

If an Attorney shall enter up judgement contrary to an expresse rule of Court, being served therewith, this is a misdemeanour, and upon *affidavit* made

made thereof, hee ſhall ſtand committed by the Court.

Though but foure dayes bee given legally for arreſts of judgement, yet if the Court theſe foure dayes be buſie in arguments, that they cannot intend theſe motions, they will give a longer day upon a motion to that purpoſe; in the meane time the party may ſee for good cauſe: and when one ſide moves for ſtay of judgement, and alledgeth matter of Law, the Court will make a rule, moſt commonly, that unleſſe the other ſide ſhew cauſe to the contrary by ſuch a day, judgement to bee ſtayed; and now muſt the other ſide be ſerved with this rule.

Ex pede Herculem, By the length of *Hercules* his foot you may gheſſe at the bigneſſe of his body; and by this ſhort touch of particular proceedings, you may judge of proceedings in generall in the like caſes.

In ſuch caſes as theſe, where judgement is gotten by undue courſe of proceedings, if execution be gone out, if the Court vacate judgement, they will alſo grant out a *ſuperſedeas quia erroneè*, to free the parties body or goods.

If an Attorney or common perſon ſhall not obey any order of Court being ſerved therewith, or ſhall give any contumelious or diſreſpectfull words thereupon, this is a contempt to the Court, and upon information to the Court, grounded upon an *affidavit*, if the party bee preſent, hee ſhall ſtand committed; if abſent, the Court will award out an attachment againſt him.

A man brings an action againſt the Sheriffe upon an

eſcape; the defendant pleads that the priſoner eſcaped through the negligence of the Jayler, and that he was taken againe upon freſh ſuit; this is a good plea, had it been well pleaded; but the defendant ſhould have traverſed that hee eſcaped voluntarie, as the declaration charged him.

Upon a prohibition no coſts are allowed, but if the defendant proceeds in the ſpirituall Court, contrary to a prohibition, and after hee is ſerved therewith, and the plaintiffe hath an attachment againſt him for not obeying it, in this caſe the plaintiffe ſhall have coſts and damages of the defendant for his contempt: There bee infinite other caſes to move in arreſt of judgement.

Touching amendment of Writs, this diſtinction is made: If an Originall bee miſtaken, and thereby the cauſe in danger to bee overthrowne; if the Clark that made the Originall miſtooke ſome words in the writing, contrary to his inſtructions, this is amendable by the Court, for they will amend *vitium*, or *miſpriſionem ſcriptoris*, or want of forme; but if the Clarke did miſtake in the very draught of the writ, and the matter of the writ, this the Court will not mend; it will teach men to make uſe of more able Clarkes: So if the inſtructions brought to a Curſitor bee right, and the Curſitor miſtakes the plaintiffes or defendants names, this the Court will amend; but if the inſtructions be falſe or miſtaken, there the Court will not amend it, but hee muſt begin againe, and purchaſe a new Originall.

This is the difference between neſcience and negligence, the Court will amend the negligence or miſtake

miſtake of a Clarke, but not the ignorance, when (as I ſaid) the draught it ſelfe, and inſtructions themſelves in the materials are miſtaken.

When judgement is entred, and execution gone out, 'tis now too late to move in arreſt of judgement; but the defendant may ſue out a writ of errour for delay of execution, whereupon the record is removed into the Kings Bench; and if it appeare there the errours aſſigned to be ſtrong enough, they will thereupon vacate the judgement, otherwiſe affirme it; The courſe whereof is thus;

The defendants Atturney goes to the Clark of the errours, and ſhewing him the booke of the iſſue ſuggeſting an errour, deſires a *ſuperſedeas*, which he makes forthwith, and delivers to him, and if the judgement was in debt, the defendant, who is now become a plaintiffe in the writ of errour, puts in baile to the Clarke of the errours to purſue his writ of errour, then the Clarke of the errors takes inſtructions by the paper booke for the writ of errour, which hee puts to making to the Curſitor, where the action upon the former judgement is laid, and this writ is directed to my Lord chiefe Juſtice, iſſuing out of the Chancery: at the returne of the writ of errour, the defendants Atturney in the writ of errour gives a rule with the Clarke of the errours for the tranſcripting of the Record into the Kings Bench, which is to bee done by the Clarke of the errours, the plaintiffes Atturney in the writ of errour giving him the number roll thereof for that purpoſe: the Record being tranſmitted into the Kings Bench, a *ſcire fac'* goes out into *Midd'* being ſued out by the defendant in the writ of errour,

ad

ad aſſignandum errores, and if the plaintiffes Atturney doth not aſſigne errours within three or foure dayes after the returne hereof, the defendant may *nonſuit* the plaintiffe, and get coſts taxed a ſecond time; and after ſuch a *nonſuit* hee loſeth the benefit of his writ of errour, and is utterly barred to bring any more.

But if hee doe aſſigne errours, hee muſt deliver a copy of the whole proceedings of the declaration, with the pleadings, and verdict, and judgement, and then aſſigne errours in ſpeciall, perhaps divers errours *in hoc erratum*, *&c.* to this the defendant pleads generally *in nullo eſt erratum*; Thus iſſue being joyned, the Court gives a day for the Record to be read, and if it appeare to the Court that the errours aſſigned be ſufficient to reverſe the judgement, then the former judgement is vacated, and the defendant who was plaintiffe in the common Pleas, muſt begin againe: Now, if the errours aſſigned bee not ſufficient, then is the former judgement affirmed, and the defendant in the writ of errour is to have coſts of the plaintiffe, commonly about 6. or 7. l'.

The Plaintiffes Atturney in a writ of errour, from the firſt ſuing out of a writ of errour, muſt be carefull to ſearch ſuch an errour, or ſuch errours as will hold, or elſe hee puts his client but to unneceſſary charges: Divers errours may be aſſigned, and yet none hold; want of forme is not errour ſufficient, for that the Statute of *viceſimo primo Jac.* helps.

So, if the judgement bee in the common Pleas in an action upon the caſe after a verdict, and the plaintiffe in his declaration layes his damages 100. l'. and the Jury finde 200. l'. damages, and judgement entred

up

up accordingly, to assigne this as errour, is sufficient to reverse the judgement in a writ of errour; now if the plaintiffe in this case in the common Pleas had remitted 100.l'. and judgement had been entred up but for 100. l'. as hee laid his damages, then it had beene good, and no errour.

If judgement passe against a man at the common Pleas, who is *infra ætatem*, and yet hee defends not by his guardian, he may bring his writ of errour, and assigne this, and it is a sufficient errour.

So, if the plaintiffe in a writ of errour assigne for errour that judgement being against him upon a verdict at the common Pleas, and there were foure issues upon the pleadings, and the Jury found but three of them; this and all these are errours sufficient to reverse the former judgement.

Note, when execution is gone out against the party upon a judgement in the common Pleas, if hee sue out his *superſedeas*, as upon a writ of errour, as I said before; if the party bee in execution, the Sheriffe, upon receipt of the *superſedeas*, is to discharge him, and to set him at liberty, and if his goods be taken, hee is to make restitution: If hee bee not in execution, then the *superſedeas* is a countermand to the Sheriffe, who is to forbeare to proceed against the party.

Upon an outlawry after judgement, the plaintiffe should acknowledge satisfaction upon the judgement, which he may do at a Judges Chamber in the vacation, and then a *superſedeas* upon a writ of errour will bee granted.

When the defendant satisfies a judgement, and the plaintiffe acknowledgeth satisfaction upon the record,

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let him alwayes get a releaſe of errours from the defendant, and then hee is out of all danger; and this releaſe is a barre to a writ of errour, if afterwards any ſhould be brought.

When there is a verdict againſt a man at Aſſiſes, and the defendant moves in arreſt of judgement within the foure dayes after the beginning of the Terme following, and ſuch cauſe is ſhowne that the Court ſtayes judgement, the defendants Atturney is to ſerve the plaintiffes Atturney with the order of the Court, and alſo the Clarke of the Aſſiſes if hee will, who will not then returne the *poſtea*.

When the defendants or plaintiffes Atturney gets a rule by motion in Court, hee is to ſerve the other ſide with it, for ſo the rules are generally upon notice given, and then if the rule bee not obeyed, the Court upon information thereof will grant out an attachment againſt him which ſhould have obeyed the rule, or commit him: but if they bee not ſerved with the rule, they are not bound to take notice thereof.

It was lately obſerved by the Court, that it is uſuall for defendants to clap in demurrers the laſt day of the Terme, to put off a tryall and prevent a judgement; ſo that the other party had no time to move the Court: It was therefore ordered, that demurrers ſhall be put in before the laſt day of the Terme, or the other ſide may chuſe to accept thereof.

Note, In all actions wherein is *vi & armis & contra pacem*, as treſpaſſe, battery, *ejectione firme*, &c. when the defendant is convicted, and a judgement againſt him, hee fines to the King, and muſt compound with the Clarke of the *Capias pro fine* in that Prothonotaries

ries Office, where the cauſe is entred; and in caſe the defendant doth not compound, a *capias pro fine* is ſent out by him who keeps the booke for that purpoſe; and thereupon if the defendant come not in, an exigent is ſent out and awarded, and then a *capias utlagat'*, and ſo hee is troubled till hee come in and pay his fine.

So, where the defendant pleads *non eſt factum generall'*, and judgement againſt him, hee fines to the King as before.

So, upon every *reſcous* returned, the reſcuers being fined by the Court: And in theſe caſes the judgement is entred up at the later end thereof thus; *Et pred' def' capiatur*, which is the *capias pro fine* at the Kings ſuit, &c.

The Court hath thought fit to ſettle an order that what defendant or plaintiffe once retaines an Attorney, and hee appeares for him, hee ſhall not now alter or change him for another Attorney, unleſſe hee ſhew ſome cauſe, and get leave of the Court.

When iſſue is joyned in a cauſe where either party is jealous the other will bee too hard for him upon the triall, as being a great and potent man in that County where the Record is to bee tryed, and therefore the Jury may doe for him out of favour or feare; the other ſide may move the Court for a triall in another County, by an indifferent Jury who are unknown to both ſides, and it will bee granted; *tamen quare.*

And in all caſes where a man is ſtraightned of time that hee cannot plead, or the like; upon a motion the Court will helpe him if it be not againſt reaſon, or the courſe of the Court.

In what cases wager of Law lies.

Ley gager, vadiare Legem; to wage his Law, that is, to take an oath that hee oweth not the debt demanded of him upon a simple contract, nor any penny in manner and forme as the plaintiffe hath declared.

Wager of law lyeth not where there is a specialty or deed to charge the defendant; but when it groweth by word, so as hee may pay or satisfie the partie in secret, whereof the defendant, having no testimony of witnesses, may wage his law; and thereby, if the plaintiffe stand to it, and the defendant doe wage his law, the plaintiffe is for ever barred.

The defendant may wage his law to a book-debt, or upon a *mutuat*, upon an *in simul computasset*, in detinue, &c.

In an action of account against a Receiver, upon a receipt of money by the hand of another *per account rendu*, (unlesse it be by the hands of his wife) the defendant shall not wage his law, because the receipt is the ground of the action, and traversable; but in an action of debt upon an arbitrement, or in an action of detinue by the bailement of anothers hand, the defendant shall wage his law, because the *debet* or *detinet* is the ground of those actions, and the contract or bailement, though it bee by another hand, is but the conveyance, and not traversable.

When a man pleads *nil debet per legem*, and the defendant essoynes not at the day, nor performes his law, the plaintiffe shall recover costs: now is the plaintiffe

plaintiffe to enter a *præcipe* hereof in the common Remembrance, upon which the Prothonotary signes costs for *defecit de lege*.

In an action of account against a Bailiffe of a Manour the defendant cannot wage his law, because it foundeth on the realty.

In an action of debt for rent upon a lease for yeers, or an action of detinue for detaining an indowment of a lease for yeers, the defendant shall not wage his law, much lesse for charters, or deeds which conceme the inheritance.

In actions of debt for a fine or amerciament in a Leet, the defendant shall not wage his law, because the Leet is a Court of Record.

But in an action of debt for an amerciament in a Court Baron the defendant may wage his law, because it is no Court of Record.

In debt upon an account before Auditors, the defendant shall not wage his law.

In an action of debt by a Gaoler against a prisoner, the defendant shall not wage his law, for hee ought not to suffer him to dye for want of sustenance: otherwise it is for tabling of a man at large.

In an action of debt brought by an Attorney for his fees, the defendant shall not wage his law, because hee is compellable to bee his Attorney: and so, if a servant bee retained according to the Statute of labourers, in an action of debt for his salarie, his Master shall not wage his law: Otherwise it is, if he be not retained according to the Statute.

Whersoever a man is charged as Executor or Administrator, hee shall not wage his law; for

no man ſhall wage his law of another mans deede.

A man under the age of 21. yeeres ſhall not wage his law.

An Alien ſhall wage his law in that language hee can ſpeake.

A *Feme covert*, together with her husband, may wage her law for the debt of the wife.

If an Infant bee plaintiffe, the defendant ſhall not wage his law.

A man outlawed, or attainted in an attaint, or upon an indictment of conſpiracie or perjury, or otherwiſe, whereby hee becomes infamous, ſhall not wage his law.

Atturnies ſhould bee tender how they adviſe their clients to wage law; for if it bee a juſt and reall debt, and unſatisfied, and the plaintiffe cannot prove it either by witneſſe, hand-writing, or other way, and this the defendant knowes; now ought not the Atturney to adviſe his client to wage his law, but to will him to agree, and make his peace, for men in theſe dayes have ſuch large conſciences, that they will ſweare a man out of his debt, if ſo they may evade it: but if the defendant hath truly paid him privately, and notwithſtanding hee ſues him; now may hee adviſe his client, the defendant to wage his law; and this oath may ſtand with a good conſcience.

In no caſe where a contempt, treſpaſſe, deceipt, or injurie is ſuppoſed in the defendant, ſhall hee wage his law, becauſe the law will not truſt him with an oath.

When the defendant pleades *nil debet per legem*, hee is to imparle till the Terme following, or hee may

may doe it preſently at his owne election *inſtanter*. *Nil debet per legem inſtanter.*

But if he get day over till the next terme, he is to have ſpeciall care to come at his day, or his Attorney muſt remember the time when his Client was to doe his law; and in caſe hee cannot then doe it, he muſt be ſure on the eſſoine day of that returne to caſt an eſſoine, whereupon the Plaintiffes Attorney will adjourne it 15. daies longer: which if hee neglect, the Defendant may non-ſuit the Plaintiffe; but if the Plaintiffe doe adjourne it 15. daies longer, then the Defendant is to doe his law at the day given him peremptorily, or judgement ſhall be awarded againſt him, *quia non perfecit legem.*

In caſe the Defen. at his day faile to doe his law, if his Attorney faile alſo to caſt his eſſoin, the Plaintiffes Attorney may enter a *nie recipiatur*, & give him day in Court to doe it within three or foure daies after, and upon the Defendants default thereupon, judgement ſhall paſſe againſt him.

Whereupon the Plaintiffes Attorney is to get the Prothonotary (in whoſe office the cauſe is) to ſigne coſts for his Client, which done, hee may make forth execution in what ſort he thinkes beſt.

The manner of a wager of law done in Court is thus: The Defendant ſtanding towards the lower end of the Barre, the Judges aske him why he payes not the money, hee anſwers, he owes him nothing, or that he hath paid him, or ſuch like, then the Defendant ſaith after the Secondary theſe words: *viz.* This heare, you Juſtices, that I owe not this debt, nor any penny thereof in manner and forme as the

Plaintiffe hath declared againſt mee, ſo God mee help; and if he thus depoſe,& the Plaintiffe ſtand to it, then is the Plaintiffe perpetually barred to bring any other action for this debt, but in caſe the Defendant be ready to doe his law, and the Plaintiffe will not ſtand to it, but be non-ſuit, and pay coſts to the Defendant, then is he at liberty to bring another action, as an action on the caſe if he pleaſe, and then the Defendant ſhall not wage his law.

Note, a man may wage his law in all reall actions where *ſum.* lies, as in Formedon, in Reverter, or in remainder, *waſt. War. car. &c.* if the Sheriffe returne that he hath ſummoned, whereupon a *grand Cape* is awarded out, if the Defendant come in, and wage his law that hee was not ſummoned, hee ſhall avoid the *grand Cape.*

If a man be to doe his law *in quindena paſche*, if he caſt an eſſoine, the Plaintiffes Attorney will adjourn it till *quinque paſche* peremptory, then if he come and doe his law, judgement is entred up thus: *Quindena paſche, ad quem diem hic ven. prad. quer. per Attorn. ſuum prad. Et prad. Def. fecit ſe eſſon. de malo veniendo verſus præfat. quer. de prædict. placit. Et habuit inde diem per eſſon. ſuum hic uſque à die paſche in quinque ſeptimanas, tunc prox. ſequen. Et modo hic ad hunc diem ven' tam. prad. quer. per Attorn. ſuum prædict. quam prad. Def. in propria perſona ſua. Et ſuper hoc idem Def. perfecit legem ſuam prad. ſe duodecima manu. prout eum ſuperius vad. Ideo conſ. eſt quod prad. quer. nihil capiat per breve ſuum prad. ſed ſit in mia' pro fl' clam ſuo, & prad. Def. eat inde ſine die, &c.*

If the Defendant be ready at the Barre to wage his

his law, and the Plaintiffe being called will not appeare, but is non-ſuited, the Defendant ſhall recover coſts againſt the Plaintiffe, the entry of the judgement is thus: *Ad quem diem hic ven. prad. Def. in propria perſona ſua parat. ad perficiend. legem ſuam prad. prout eam ſuperius vad. Et prad. quer. licet ſolempnit. exact. non ven. nec eſt ulterius proſecut. bre. ſuum prad. Ideo ipſe & pleg. ſui de proſ. ſint inde in mia' quere nom. pleg. &c. Et prad. Def. eat inde ſine die. &c. conſ. eſt etiam quod prad. Def. recuperet verſus prafat. quer. dampna ſua occaſione premiſſ. ad 40.s. eidem Def. per diſcretionem. Juſtic. hic ad requiſic. ſuam pro miſ. & cuſtag. ſuis in ea parte ſuſtent. juxta formam ſtatuti per Cur. hic adjudicat. &c.* and now is the Plaintiffe at election to bring an action on the caſe.

If the Defendant ſhall faile to wage his law after an eſſoine caſt, the entry of the judgement is *ut ſequitur.*

Quind. paſche, ad quem diem hic ven. prad. quer. per Attorn. ſuum prad. & prad. Def. fecit ſe eſſon. de malo veniendo verſus prafat. quer. de predict. placito, & habuit inde diem per eſſon. ſuum hic uſque ad hunc diem ſcil. à die paſch. in quinque ſeptimanas tunc proxim. ſequent. Et modo hic ad hunc diem ven. prad. quer. per Attorn ſuum predict. Et op. ſe quarto die verſus prafat. Def. de predict. placito quod eſſet hic ad hunc diem ad perficiend. legem ſuam predict. prout eam ſuperius vad. Et ipſe ſolempnit. exact. non ven. ſed defalt. fac. ideo conſ. eſt quod prad. quer. recuperet verſus prafat. Def. debitum ſuum prad. & dampna ſua occaſione detentionis debiti illius ad 40.s. eidem quer. ex aſſenſu ſuo per Curiam hic adjudicat. & prad. Def. in mia' &c.

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The manner of ſuing forth a recovery.

IN a recovery in a writ of entry in the *poſt.* the Attorney who ſueth it forth muſt take good advice in the drawing of his writ.

Then the Attorney, or ſome other for him, muſt take the writ before it be ſealed, and carry it to the Alienation office in the Temple, and compound with one of the Commiſſioners there for that purpoſe, then pay the fine to the receiver, and get it endorſed, holden or not holden *in capite*; and if the land be not worth 40.ˢ. *per annum* upon *affidavit* made, no fine ſhall be paid, then muſt the writ of entry be there entred, and Maſter *Crewes* hand and two of the Commiſsioners taken thereunto, then deliver the writ to the Curſitor to bee ſealed, then to the Kings Attorney, which you ſhall receive againe within a day or two.

Then if the tenant of the land doe appeare in proper perſon, the *præcipe* of your writ of entry muſt be taken out into the Prothonotaries firſt remembrance, and in the margent of the remembrance make the appearance of him who is vouched, and this being done, deliver the remembrance to a Serjeant at Barre, when the Court is at good leaſure.

Note withall, that if this be a ſingle voucher, you are to retaine three Serjeants, if a double voucher, foure Serjeants.

When this is done, your writ of entry and recovery is to be engroſſed, and your recovery to be exemplified, and your writ of *ſeiſin* is to bee made forthwith;

forthwith: But if the tenant doe not appeare *in propr' persona* at the Barre, but by Attorney, then you muſt have a *ſum' ad warr'* entred againſt the tenant, ſo that your recovery cannot be finiſhed that Terme.

And at the returne of the *ſum'*, which muſt be the ninth returne after the returne of the writ of entry, acquainting that for one, the writ of *ſum'*, with the awarding thereof, and warrant of Attorney by whomſoever taken, whether before a Judge, or ſpeciall Commiſſioners; If it bee by ſpeciall Commiſſion, then the *dedimus poteſtatem* and *mittimus* all being filed together, muſt bee delivered to a Serjeant at the Barre, who, with three more of them, muſt then draw the recovery at the Barre, which is to bee recorded by the Prothonotary, paying the boxe and fees of Court; then deliver them to a Clerk of the Court, to enter and exemplifie.

Note, when you have compounded your writ of entry, you are to returne it thus on the back:

At the upper end, *Plegii de proſequend.* { John Doo. / Richard Roo.

In the middle, *Summa* { John en Dem. / Richard Bail.

At the lower end, I. B. *Att' Pl'*.

Note, If the lands lie holden in *capite*, you muſt take courſe before you ſue out your writ of entry, for licence in that behalfe, elſe you ſhall rue it to your great inconvenience, and bee forced to ſue out your pardon.

It behooveth the Atturney for the demandant to be circumspect, both for the returne of the writ of entry and seisin, and for the filing of them, as also for the warrants of Atturney on both sides, else by default or omission in any of them, the recovery may be overthrowne againe.

And for further assurance and safety in this kinde, it hath beene used, that they have exemplified both the writ of entrie and seisin, with the returnes thereof, for feare any of them should afterwards bee mis-filed or miscarried.

And if you would search for any recovery acknowledged long before, you shall most readily finde it with the Clarke of the warrants.

The course of suing forth a Fine.

FIrst draw your *pracipe* in paper, then engrosse it and the concord in parchment, then get your writ of covenant made by the Cursitor of the Shire where the land lyeth, then goe to the Alienation Office and compound for the value of the land; the fine being set downe by one of the Commissioners, you are to pay it to the Receiver; then get it endorsed and entred, and Master *Crewes* hand, and two of the Commissioners hands to it.

Then deliver the writ of covenant to the Cursitor to seale, which being sealed, deliver to one of the Serjeants at the Barre (the Cognisors being there present) which hee will deliver into the Court to be there recorded; and if any of the Cognisors be a *feme covert*, shee must goe from the barre to the prisne Judge at

the

the side of the Court to be examined; then take your *pracipe* and concord together with the writ of covenant, paying the fees of the Court.

If the Cognisance bee to bee taken before the Lord chiefe Justice of the common Pleas, then drawing the *pracipe* and concord onely in paper (which is the readiest way) taking onely the Cognisors with you, and some one that knoweth them, and you shall presently be dispatched, calling for the transcript afterward.

Any other Judge of the same Court, Kings Bench, or Baron of the Exchequer, or any Serjeant at law may take the same before the *dedimus* sued forth, but when that *ded.* is sued forth, you are to carry it under seal to the Judge, Baron, or Serjeant that took the Cognisance of the fine, who will return the concord on the backe of the *ded. potestatem*.

And if the acknowledgement be to be taken by speciall *ded. potestatem*, then you must deliver to the Curitor the Commissioners names that are to take the knowledgement thereof, of which Commissioners one must be a Knight, and the Curitor is to make up the *ded. potestatem* by the concord.

Then get your writ sealed, and deliver it to the Commissioners with the *pracipe* and concord engrossed in parchment with seales and wax to it, and when your Commissioners have taken the knowledgement, they returne the *ded. potestatem* thus: *Executio istius Commissionis patet in quadam schedula huic breui annexa*.

And file the concord unto the backe of the *ded. potestatem*, and the Commissioners are to set their

ſeales to the concord. and their hands to the *Dedimus*.

Then put in your warrant of Atturney with the Clerke of the warrants, where your writ of covenant muſt be ſigned, and make it thus: A.B. *polo.ſuo* W.H. *ad proſequend. breve de con. verſus* T.B. *de terris & tenementis in L. M. & H.*

Then carry them to Maſter *Jones* his office to returne the ſame as your writ of entry is, and to put his ſtamp to the writ of covenant; then carry them to the *Cuſtos brevium*, and there deliver them to the Clerke, who is for the County where the lands lye, and he will take out into paper what belongs to him to doe, and endorſe the writ, ſetting downe when the Proclamation ſhall be made, then carry them to the Kings Silver, who will diſpatch what appertaines to him; and then carry them to the Chirographers to him who is Clerk of that County, and he will thereupon make the Indentures of Chirography.

Here note, that the writ of covenant and *Ded. poteſtatem* muſt agree in names, acres, and place.

Note alſo as before, if the land be holden *in capite*, you muſt ſue out your licence of alienation, for if you enter into the lands without licence, the King will have a writ of Intruſion, and ſo receive the meane profits thereof, untill you have ſued forth a pardon, which will be chargeable.

How

How a licence of Alienation is to be sued out.

FIrst, you are to get Master *Lambe*, who is now Cleake of that office, to draw up your docquet in paper, which you are to carry to the office of Alienation in the Temple. At this office you must compound for the value of the land, and you must pay the third part of the value sessed for a fine, when the Master of the Chantery, or Doctor, who attends for that purpose, shall have set his hand to the docquet.

This being done, your docquet is to bee entred there, then two of the Commissioners will set their hands to the docquet.

Then carry your docquet to the office where it was made, to have the licence exemplified & sealed.

Annuity.

AN Annuity is a yearly payment of a certaine summe of mony granted to another in fee for life or yeares, and herein the grantee hath election to bring a writ of Annuity charging the person, or to distraine upon the land. Now if hee bring a writ of Annuity, and at the returne thereof the Defendant appeares, and the Plaintiffe counts upon record, this shall amount to an election, and now is the land discharged of the distresse for ever; but if he doe not sue out a writ of annuity, but distraines, and the tenant sueth replevin, and then the grantee avowes for arrerages of this rent, so that now hee

maketh it a rent charge, then is the land charged, and the perſon of the grantee diſcharged; ſo there are two remedies given for one yearly ſumme, and conſequently, the grantee ſhall at any time have election to take which of the remedies he will; for in all caſes where ſeverall remedies be given, the party to whom the law giveth the remedies, it giveth him withall election to take which of the remedies hee will; and after hee hath made choice of one of the remedies, he is quite debarred of the other: for he ſhall not have both remedies.

As if a man grant to another twenty ſhillings, or a robe at Eaſter, before the day the grantor hath election to deliver which he will; but after the day, the grantee ſhall demand which he will, ſo note the diverſity.

A writ of annuity lies againſt the heire of the grantor, if hee have Aſſets by deſcent, that is, lands by deſcent ſufficient to pay the annuity, but if hee have aliened theſe lands before the writ of annuity brought, then is hee diſcharged; but note, an action of annuity lies not againſt him by preſcription.

A Parſon with the conſent of his Ordinary and Patron grants an annuity, this ſhall bind the ſucceeding Parſon.

Alſo if the Parſon die, and in time of vacation the Patron by the conſent of the Ordinary, or the Patron and Ordinary grant an annuity out of the glebe, this ſhall bind the ſucceeding Parſon.

An annuity granted by a Biſhop by the confirmation of Deane and Chapter, ſhall bind the Biſhop ſucceeding.

If

If a Parſon without the conſent of the Patron, but with the conſent of the Ordinary grant an annuity upon good conſideration, this is good againſt the Parſon ſucceeding.

Note, an action of annuity ſhall be brought in the ſame County where it was granted.

And when you have once recovered upon a writ of annuity, you ſhall not have a ſecond action, but a *Scire fac'* upon the former judgement.

And upon one recovery in a writ of annuity, you ſhall alſo recover all the former arrerages.

A. recovers in an annuity, and maketh *B.* his executor, and dies, *B.* ſhall have a *Scire fac.* for all the arrerages upon the former judgement.

A releaſe of all actions perſonall or reall is a good barre to an annuity after it is due, but if the grantee releaſe before it be due, the releaſe ſhall not barre, becauſe it is not meerly in action, but may be granted over, *tamen quære*, and note the diverſity.

If an annuity be brought, and (the action depending) the annuity is determined, the writ faileth for ever; for a man cannot have an action for the arrerages alone, but for the annuity and arrerages, which is worthy your obſervation.

When the King grants an annuity for life or yeares, it ought to bee expreſſed in the grant by whoſe hands hee ſhall receive the annuity, elſe the grant is void, for hee cannot ſue the King, and no man is bound to pay him without expreſſe words in his grant.

Henry Brereton brings his annuity againſt *William Aſhton de placito quod reddat ei* 50 *l. quæ ei arrero ſunt*

de

de annuo redditu 50.l. *quas ei debet, &c.* and ſo he recites the grant of *William Aſhton* to him: moreover, the grant is, that if the annuall rent of 10.l. be behind (being lawfully demanded) the ſaid *Henry* ſhould diſtreine upon his lands in Sambidge *in Com.* Denbigh, and keep the diſtreſſe till hee were ſatisfied, and ſo by vertue of this grant he was ſeiſed of this annuity, till the Defendant *William Aſhton* at our Lady day laſt, and five yeares before, denied to pay, and as yet doth deny, whereupon he brings his action. To this the Defendant *William Aſhton* pleads, *Quod predictus Hen. Brereton ante diem impetrationis brevis originalis prad. Henr. apud Sambidge in Com. Denbigh levavit predict.* 50.l. the arrerages of the rent, *per diverſas diſtrictiones in terris vocat. B. in Sambidge in Com. Denbigh. Et hoc paratus &c. unde petit judicium, & actio, &c.* the Plaintiffe *Henry Brereton* replies, *Quod levavit prad.* 50.l. *nec aliquem devenisse inde per aliquem diſtrictionem in terris prad. fuit. Et hoc put quod inquiratur per patriam*, becauſe the record is not triable in Denbigh the venue *fac.* for the Jury is awarded ſpecially into Salop. the County adjoyning to Denbigh, and upon tryall the Jury find for the Plaintiffe *Henry Brereton*, *Quod non levavit prad.* 50.l. *nec aliquem devenisse inde per aliquem diſtrictionem in terris infra ſcripta. Et aſſid. dam. ad 6.l. per miſ. &c.* then is judgement entred up againſt the Defendant *Will. Aſhton*, *Ideo conſideratum eſt quod prad. Henr. recuperet verſus prad. Will. annuum redditum prad. & arreragia ejuſdem tam antedictum impetrationis, &c. quam poſt que in toto ſe extendunt ad* 70.l. *& dam. prad. ad 14.l. per Jur. &c. aſſeſſus una cum* 8.l.

Note, in recovering an annuity, the Plaintiffe recovers all arrerages.

eidem

eidem Hen. *ad requiſitionem, &c. per Cur' hic adjudicat', quæ quidem arreragia & dam' in toto ſe attingunt ad* 78. l'. *&* 14. d'. *Et pradict'* Wills' *in mia', &c.* and ſo execution is awarded againſt the defendant.

Accompt.

THere bee three writs of accompt, *viz.* the firſt, againſt one as Bailiffe; the ſecond againſt one as Receiver; the third againſt one as Gardein in ſocage: no action of accompt lies againſt one as Surveyor, Controller, Apprentice, Reve or Steward.

By Bailiffe is meant one that hath the adminiſtration and charge of lands, goods, or chattels, to make the beſt benefit for the owner, againſt whom an action of accompt doth lie for the profits which hee hath raiſed or made, or might by his induſtry and care have made: and ſo the effect of the count ſhall bee, and a Bailiffe ſhall bring his action of debt upon ſurpluſage, for what hee hath over and above expended and laid out.

Note, that no ſuch accompt lies againſt an infant.

An account againſt a Receiver is, when I appoint a man to receive money to my uſe, to render an account, hee ſhall alſo bee allowed his reaſonable expences and layings out.

In an account againſt a Receiver, the plaintiffe muſt declare by whoſe hands hee received theſe monies, which hee ſhall not doe againſt a Bailiffe. And if the receipt bee by the hands of a ſtranger, he cannot wage his law.

Nor can hee wage his law in an action of debt

upon account before Auditors assigned by the Court.

If the plaintiffe declare upon an action of account, that the defendant received money of him by his own hands, and not *per auter maines*, here the defendant may wage his law.

Also if there bee two joint merchants that occupie and merchandize in common, one shall have his account against the other, naming themselves both Merchants, charging him according to the Statute as *Receptor denariorum ipsius quer' ex quacunque causa & contractu ad communem utilitatem ipsorum quer' & def' provenien' sicut per legem mercatoriam rationabiliter monstrare poterit.*

So shall one joyntenant have his account against the other, if hee make him bailiffe of his moity.

If the wife receive my money, I 'll charge the husband in my declaration, as his owne receipt; and so the law is.

A writ of account is not maintenable against the executors of a Bailiffe or Receiver.

But it lies for Executors against a Bailiffe or Receiver: Nor doth it lie against the deputy of a Bailiffe or Receiver.

An account lies not against the Parson or Clarke for offerings or money given to the poore; but against the Collectors that hold the basons into which the money is put.

Anthony Gilding brings his account against *John Amson* as Bailiffe, *de placito quod reddat ei rationabilem computum summ de tempore quo fuit Ballivus ipsius* Antonii *in B. in Com' Midd' pro eo* videlt', *qd cum predict'* Johannes *extitisset Ballivus ipsius* Antonii

tonii *unius meſſuagii & l. acrar' prati, &c. à tali feſto uſque ad tale feſtum, & proficua annualia inde per idem tempus percepit, & habuit ad rationabilem computum inde eidem* Antonio *cum de requiſit' fuiſſet reddend' pradict' tamen* Johannes *licet &c. rationabilem computum inde eidem* Antonio *non reddidit, &c. ad dd' C.l'. Et inde produ' ſect', &c.* And *John Amſon* pleads that hee was never his Bailiffe to render an account: and ſo an iſſue is joyned: upon triall verdict *pro* Antonio Gilding. *Et Jur' dic' qd pradict'* Johannes *fuit Ballivus ipſius* Antonii *ad computum reddend'*; then Judgement, *qd pradict'* Johannes *computet cum prafato* Antonio *de tempore & proficuis pradictis; & ſic in mia', quia prius non computavit:* Upon this verdict and judgement the Court doth aſſigne Auditors, before whom the defendant *Fobn* is to render an account; the Auditors appoint a day when to heare; in the meane time hee ſtands committed, or puts in baile to account.

Note, if an action be brought againſt one as Bailiffe, hee may pleade generally, *ne unques ſon Bailiffe.*

So a Receiver may plead generally, *ne unques ſon Receiver*; or either may pleade *plene computavit.*

And note, that upon giving up his accounts, the Auditors will allow what hee hath laid out, and if the defendant be now found in arrere, if he ſatisfie not for the preſent, the plaintiffe may bring his action of debt, to which the defendant cannot wage his law.

So, account lies againſt one as Bailiffe and Receiver, *de placito qd reddat ei rationabilem computum ſumæ de tempore quo fuit Ballivus ipſius quer' in* W. *& Receptor denariorum ipſius quer'*: to which the

defendant pleads *ne unques ſon Bailiffe ou Receivor pur account rendre*, which is the generall iſſue.

So, Account lies againſt *Gardein* in Socage, and you declare upon the Statute of Marlebridge, *cap.* 18. *de placito quare cum de communi Concilio regni Domini Regis Anglia, proviſum ſit quod cuſtodes terrarum & tenementorum quæ tenentur in Socagio hared' terrarum & tenementorum ill' cum ad plenam ætatem pervenerint, reddant rationabilem computum ſuum de exitibus, de terris, &c.*

The firſt writ that goes forth in account is an Originall, and thereupon a *cap'* to arreſt the body, which being arreſted, and the party appearing by Atturney, you are to declare.

If an action of account bee brought againſt a Bailiffe for receiving moneys divers dayes by the hands of others, the defendant may plead that *quoad part' non extitiſſet Ballivus, & quoad alter part' plene com. putavit*; then the plaintiffe replies, *quod non computavit, & exit' ſuper inde: Ideo quoad triand', &c.*

When a man pleades two pleas, then two iſſues, with an *Ideo quoad triand', &c.*

Account lies not againſt Executors.

If a ſtranger enter into the lands of an infant, within age of 14. yeers, and taketh the profits of the ſame, though hee bee not *procheine amye*, or *gardein* in Socage, yet the infant ſhall charge him as *gardein* in Socage.

And it is no plea for him to deny that hee is *procheine amye*, but hee muſt anſwer to the taking of the profits, the writ being, *quod reddat rationabilem computum ſumm de exitibus provenient' de terris & tene-*

mentis

mentis in N. quæ tenentur in Socagio; yet if this ſtranger dye, or the true guardian in Socage dye, no writ of account lies againſt his heire.

Guardian in Socage cannot wage his law.

Abatement.

ABatement ſignifies to deſtroy. Abatement *del brieſe* is an overthrowing of the writ.

As if an executor ſue an action in the right of his teſtator, before he hath proved the will, if the Defendant plead that the executor hath not as yet proved the will. *Et unde pet. judicium de bri' illo*, and it fall out, that the Defendants plea is true, and the Plaint. hath not proved the will before he commenced his action (for note, the originall muſt beare *teſte* after the probate of the teſtament) then ſhall the writ abate, and the Plaintiffe muſt begin againe.

An executor cannot ſue an action before probate of the will.

So if variance betwixt the writ and ſpecialty, or record be pleaded by the Defendant, this ſhall abate the writ, and the Plaintiffe be compelled to purchaſe a new originall.

Alſo if there be two executors, and one brings his action without a ſum. and ſeverance of the other, the Defendant may plead, that there be two executors, *Unde ex quo alter executur non nominat' in brevi prædicto pet. judic. de brevi illo*: this ſhall overthrow the Plaintiffes action.

The miſ-naming of the Plaintiffe, Defendant, or place, if the Defendant plead a *miſnomer*, it ſhall abate the action.

Alſo an action of debt brought againſt an executor in the *debet* and *detinet*, ſhall abate the writ, if

pleaded by the Defendant; for it ſhould have been in the *detinet* onely.

If a widow brings her action, the Defendant appeares, and the Plaintiffe counts, before judgement the widow marries, her action is loſt, and ſhe muſt begin againe; but had ſhe had judgement before ſhe had married, then her hnsband and ſhe might have proceeded with a *Scire fac.* upon that judgement, and therein have ſhewen the intermarriage after the judgement.

So if an action of waſte be brought by *baron* and *feme* in remainder in taile ſpeciall, and depending the writ, the wife dies without iſſue, this writ ſhall abate, becauſe waſte muſt be *ad exheredationem, &c.* There be many other cauſes of abatement, which for brevities ſake I'le omit.

When the Defendants Atturney ſhall take a declaration, he had beſt to get a ſpeciall Imparlance entered, if he meane to plead in abatement the term following.

But if the Defendant ſhall once plead ſpeciall matter, and put in his plea; a plea in abatement will not be accepted afterwards.

Which ſpeciall Imparlance hee may have of courſe, paying two ſhil. for the entry thereof to the Plaintiffes Attorney or Clerke.

If a man that is a Papiſt convicted ſue an action, the Defendant may plead that he is a convicted Recuſant by the Statute of 23. *Eliſ.* which if you obſerve well, is not an abatement, but a barre, and diſableth till he conforme to our Church.

So if an *Alien nee*, a man borne out of the Kings dominions,

dominions, in the dominion of the Kings enemies, ſhall bring an action, the Defendant may plead that he is *alienigena,* borne out of the Realme, which doth diſable him to proceed further till he be made Deniſon, which the Kings Letters Patents may doe, and then hee is at election to proceed in his ſuit.

So it is if the Defendant plead excommunication to the Plaintiffe, the Plaintiffe cannot proceed till he get his abſolution.

And ſo 'tis if an outlawry be pleaded, no proſecution on the Plaintiffes part till it be reverſed: And in all theſe caſes the Plaintiffe may proceed, without purchaſing a new originall, and beginning againe, when they have made good their ſeverall diſabilities, *tamen quare.*

If the Defendant plead to a declaration upon a bond an outlawry, and the Plaintiffe reply *nul tiel record,* the Defendant for proofe muſt produce the outlawry under ſeale.

A Recuſant convicted cannot ſue an action, nor if hee bee Patron ſhall hee grant an avoidance, the grantee of a Recuſant is diſabled to preſent, the law diſables him to execute any office, and accounts him as an excommunicated perſon in law.

A Recuſant cannot keep a Chaplaine, and this is by the ſtatute of *tertio Jacobi.*

If a *Quare Impedit* be brought, and the Patron before the plea be put in, dyes, the writ ſhall abate, and if he dye after the plea be put in, the writ ſhall not abate.

So if any action bee brought, and the Plaintiffe

or

or Defendant dye before judgement, they muſt begin againe.

Challenge.

THere be two ſorts of Challenges to the Jurors, 1. to the Array, 2. to the Polle.

A challenge to the Array is at once to except againſt all the perſons ſo arrayed and empannelled, againſt the whole Jury in reſpect of partiality, or default of the Sheriffe, or Coroner, or other officer that made the returne.

Principall cauſe of challenge to the array is firſt, where the Sheriffe or other officer be of kinred or affinity to the Plaintiffe or Defendant: 2. if any one or more of the Jury be returned at the denomination of the Plaintiffe or Defendant, the whole Jury ſhall be quaſhed; ſo if the Sheriffe return any that be more favourable to the one ſide then the other: 3. if the Plaintiffe or Defend. have an action of battery againſt the Sheriffe, or the Sheriffe againſt either party, this is good cauſe of challenge; but otherwiſe, 'tis if the Sheriffe have an action of debt againſt either party.

Or if the Sheriffe have parcell of the land depending upon the ſame title.

Or if the Sheriffe or his Bayliffe which returned the Jury be under the diſtreſſe of either party, or if the Sheriffe or his Bailiffe be either of councell, atturney, or ſervant of either party, goſſip, or arbitrator in the ſame matter.

If a Peere of the Realme, or Lord of Parliament, (be he Lord Spirituall or Temporal) be Plaintiffe or Defendant,

Defendant, Demandant or Tenant, a Knight muſt be returned of the Jury, elſe the array may be quaſhed.

Note, upon that which hath been ſaid, that this challenge to the array is in reſpect of the cauſe of unindifferency or default in the Sheriffe, or other Officer that made the returne, and not in reſpect of the perſons returned of the Jury. And if the challenge to the array be found againſt the party, yet he ſhall have his particular challenge to the Polle.

A challenge to the Polle is a challenge to the particular perſons.

And this may be reduced to foure heads:

1. *Propter honoris reſpectum*, for reſpect of honour.
2. *Propter defectum*, for want or default.
3. *Propter affectum*, for affection or partiality.
4. *Propter delictum*, for crime or delict.

1. *Propter honoris reſpectum*, as a Peere of the Realme, or Lord of Parliament, are not to be ſworn in Juries, in reſpect of their Nobility; and if neither party will challenge him, hee may challenge himſelfe.

2. *Propter defectum*, as an alien borne, and villains, and bondmen; alſo every Juror ought to have forty ſhillings *per annum*, either in fee ſimple, fee taile, for terme of his owne, or anothers life; or in the right of his wife, out of ancient demeſne, for freehold within ancient demeſne will not ſerve.

Alſo there ought to bee foure of the Hundred returned, where the cauſe of action ariſeth, for their better notice of the cauſe; for *vicini vicinorum facta præſumuntur ſcire.*

3. A challenge to the Poll, which is moſt common, is *propter affectum.*

As if the Juror be of bloud or kindred to either party, and how farre remote ſoever hee is, yet the challenge is good; affinity or alliance by marriage is a principall challenge, as well as conſanguinity by bloud, as if the Plaintiffe or Defendant marry the daughter or couſin of the Juror, or the Juror marry the daughter or couſin of Plaintiffe or Defendant.

Alſo if the Juror have part of the land that dependeth upon the ſame title.

If a Juror bee within the Hundred, Leet, or any way within the Seigniory immediately or mediately, or any other diſtreſſe of either party, this is a good challenge; but if either party be within the diſtreſſe of the Juror, this is no good challenge.

So if a witneſſe named in the deed be returned of the Jury, or one within age of 24. yeares, it is a good challenge.

So likewiſe one may bee challenged that hee was inditer of the Plaintiffe or Defendant either of treaſon, felony, miſpriſion, or the like.

If the Juror bee Godfather to the childe of the Plaintiffe or Defendant, or *è converſo*, this is a good cauſe of challenge.

Alſo if a Juror hath been an arbitrator, or choſen by the Plaintiffe or Defendant in the ſame cauſe, and treated of the matter, this is a good challenge, otherwiſe 'tis if there were no treaty, if the Juror be of councell, or ſervant to Plaintiffe or Defendant.

If any of the Jurors after he be returned doe eate and drinke at the charge of either party, it is a good challenge.

Actions

Actions brought either by the Juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are principall challenges.

In a cause where the Parson of a Parish is party, and the right of the Church commeth in question, to be a Parishioner is a good challenge: otherwise it is in debt or any other action.

If either party labour the Jury, and give him any thing to give his verdict, this is a principall challenge.

That the Juror is fellow-servant with either party, is a challenge for favour.

So, if the sonne of the Juror hath married the daughter of the plaintiffe, this is no principall challenge, but to the favour.

Actions brought either by the Juror against either of the parties, or by either of the parties against the Juror, which implie no malice or displeasure, are no principall challenge, but a challenge for favour.

Neither of the parties can take that challenge to the poll which he might have had to the array.

Note, when the plaintiffe hath a principall cause of challenge to the array, if the Sheriffe returne the Jury, the plaintiffe may in that case, for his owne expedition, upon joyning of issue, pray the *venire fac'* may bee directed to the Coroners, which hee cannot have, unlesse the defendant confesse it; then the plaintiffe shall have a *venire fac'* to the Coroners; but if the defendant will not confesse it, the *venire fac'* is to the Sheriffe, and the defendant shall never take any challenge for that cause: but on the part of the defendant no such matter shall bee alledged to pray processe to

the Coroners, becauſe hee may challenge the Jury for that cauſe, and can be at no prejudice.

Fourthly, A principall challenge to the polle lies *propter delictum.*

As if a Juror be attainted or convicted of treaſon or felony, or in an attaint of falſe verdict, or for perjury, or in a conſpiracy at the ſuit of the King, or if he have been in the pillory, tumbrell, or the like, or if hee have been adjudged to bee branded, or to bee ſtigmatized, or to have any corporall puniſhment whereby he becomes infamous; and ſo if hee bee outlawed, being *exlex* hee is not *legalis homo*, or excommunicated.

This challenge to the polle muſt bee taken upon the appearance, juſt before they are ſworne, and the challenger muſt ſhew cauſe preſently; after a Jury is ſworne, it is too late.

Conſpiracie.

A Writ of Conſpiracie lies againſt two or more, which ſhall out of malice conſpire to indite another, and after hee is acquitted, then may the party ſo acquitted have an action of conſpiracie againſt them that ſo indited him.

But if one ſhall out of malice indite one, and the partie bee acquitted, an action of conſpiracie lies not, but an action on the caſe, for one cannot conſpire alone.

Note, that in actions of this nature, the plaintiffe muſt expreſſely prove that the defendant proſecuted falſely and maliciouſly.

For if my goods be ſtollen, and I have ſuch a man in ſuſpicion,

ſuſpicion, I may call him before a Juſtice of peace to bee examined, and though hee come off fairely, yet an action will not lie againſt mee; but if I doe this out of malice, without colour of cauſe, then an action will lie.

A conſpiracie is brought againſt two, both pleade *non cul'* one is found guilty, the other not; then as I take it, hee ſhall never have judgement, for that one did not conſpire, as was alledged in the declaration: ſo that hee ſhall be enforced to begin againe in an action upon the caſe againſt that one.

If a man be falſely indited of felony, and then by Act of Parliament a generall pardon of all felonies, now the party ſhall not maintaine his action of conſpiracie though hee bee acquitted; for his life was not in danger, being diſcharged by the Act.

So, if two or more ſhall cauſe one to be indited for hunting without licence in a parke, and the party is after acquitted, hee may bring his action of conſpiracie againſt them.

Conſpiracy againſt baron and feme lies not becauſe they bee but one perſon in law, but an action upon the caſe.

If a Conſpiracie bee brought againſt two, and one dye hanging the writ, yet ſhall it proceede *quoad* the other.

If two men indite another for witchcraft, which is death by the Statute, to have familiarity with an evill ſpirit, the indictment muſt ſhew whom hee did bewitch, and that the party ſo bewitched languiſhed, and lying in that caſe, died: Unto the indictment the defendant pleades not guilty, and the Jury finde him not

not guilty, and judgement accordingly, now may the party ſo indicted bring his action of conſpiracy againſt them that cauſed him to be indicted; and in his declaration hee muſt ſet forth at large the effect of the indictment, and his owne plea, *non cul'*, and how upon full evidence the Jury acquitted him, and judgement for him, and that hereby hee is brought into great infamy and ſhame, and was in danger to have loſt all his goods and lands, and alſo his life, and ſo lay his damages as hee will. The defendants in an action of conſpiracie may pleade not guilty.

Covenant.

COvenants are of divers natures, ſome perſonall, and ſome reall, touching lands and tenements: Covenant is where a man covenants with another, to aſſure him ſuch an houſe, or to ſerve him, or to infeoffe him, or to doe any other act agreed upon betwixt them; and they are both bound in ſeverall Indentures, of which either hath a part under the hand and ſeale of the other: now if either faile to perform, the other may bring his action of covenant againſt him.

If a man covenant by writing with another to infeoffe him in the Manor of Dale, but doth it not, hee that ſhould have been ſo infeoffed dyes, his heire ſhall maintaine his action of covenant againſt him.

Alſo the executors ſhall have an action of covenant made to their teſtator for a perſonall thing.

Now, if a man covenant by word of mouth to doe ſuch an act, and receives a peece of money as earneſt,

if

if hee doe it not, Covenant lies not, but an action on the case; for it is a bargaine or contract.

Covenant is alwayes in writing.

Will' Johnson is plaintiffe against *John Watson* in a writ of covenant, *de placito quod teneat ei conventionem inter eos factam secundum vim, formam & effectum quorundam articulorum indentat' inde inter eos confect'., & unde, &c.* and so you are to set forth the contents of the articles; then with a *prosequendo* that the defendant *non performavit aliquam conventionum in articulis prædict'., ex parte sua performand', protestando etiam.*, that the plaintiffe hath performed, &c. *pro placito* assigne a breach wherein the defendant hath failed; and so conclude, that he hath broken the covenant, and thereupon you bring your action.

I give you an example,

John Goodwin is plaintiffe against *John White* in an action of covenant; the plaintiffe in his Count sets forth that hee covenanted by articles that the defendant should enjoy, and bee in possession of lands called Rude lands, then in the possession of the defendant till the feast of *Michael* the Archangel next; and then it was agreed by the articles, that at the feast of *Michael* the Archangel, the defendant should leave and resigne them to the plaintiffe; then the plaintiffe with a *prosequendo* that hee hath performed all things on his part to bee performed according to the articles, assignes a breach, in *facto*, that the defendant continued in possession of those lands called Rude lands, and received the profits of them after the feast of Saint *Michael* the Archangel, against the will of the plaintiffe, and contrary to the forme and effect

of

of the articles of Indenture agreed betwixt them: *Et ſic Idem* Johannes Goodwin *dic' qd pradict'* Johannes White *conventionem pradict' de eo qd &c. licet ſepius requiſit' non tenuit, ſed infregit, & ill' ei tenere hucuſque contradixit &c. Et inde produc' ſectam. &c.*

Will' Marbury is plaintiffe in an action of covenant againſt *Hugh Wilbroome*, and in his Count hee ſets forth that it was agreed by indenture, that the defendant ſhould ſerve at the Vicaridge of B. *in com' S.* the plaintiffe allowing him x. l. alſo the defendant covenanted to diſcharge the plaintiffe of the firſt fruits payable to the King and his ſucceſſors; and then the plaintiffe ſayes that hee was bound to the King for the payment of the firſt fruits into the Exchequer to the Kings uſe at our Lady day next following in x.l. then the plaintiffe, with a *proteſtando* that hee hath performed all on his part contained in the Indenture to bee performed &c. *in facto*, that the defendant payed not theſe firſt fruits into the Exchequer at the day, according to his covenant and agreement, for default whereof the plaintiffe ſets forth that there iſſued a writ out of the Exchequer againſt him upon the bond for payment of the firſt fruits, by vertue whereof the plaintiffe was arreſted, and in execution, ſo as hee was compelled to ſatisfie the King for the firſt fruits; and ſo this is a breach on the defendants ſide, for that hee did not diſcharge him according to the agreement betwixt them: *Et inde produc' ſectam, &c.*

To this the defendant pleades *null' tiel record*; and the plaintiffe replies that there is ſuch a record, *Et hoc parat' eſt verificare per recordum illud*, and ſo a day is given to the plaintiffe to bring the record in Court,

at

at which day the defendant relinquisheth his plea, and confesseth the action; whereupon judgement is signed for the plaintiffe, and a writ to inquire of damages awarded; upon execution of which writ the Jury give 13. l. damages, and the Prothonotary signes upon the writ of inquiry 5. l. costs, then goes execution out for the whole.

After the returne of the writ of inquirie, and costs signed by the Prothonotary, judgement is entred up thus, *Ideo consid. est quod pred'* Will. Marbury *recuperet versus predict'* Hugonem *dampna sua predicta ad* 13. l. *per juratores predict. in forma predicta assess. necnon* 5. l. *eidem* Will. *ad requisit' suam pro misis & custag. suis predict. per Curiam his de incrto' adjudicat', que quidem dampna in toto se attingunt ad* 18. l. *& predict.* Hugo *in mia'.*

The first writ that issues for the arrest of the party in an action of this nature is a *cap'* thus, *Carolus &c. Vic' S. salutem; precipimus tibi &c. quod in al. cap. usque ad respondend. H. W. de placito quod teneat ei conventionem inter eos factam ut dicit, per quam &c. & effectum, quacunque indenturam inter eos confect. Et habeas ibi hoc breve &c.* And if you cannot take him upon meane processe, your best course will bee, as I said, to sue him to an Exigent, &c.

If it bee not Indentures, but a writing, then you say, *cujusdam scripti, inter eos confect. &c.*

When a declaration in covenant is delivered to the defendants Attorney, and he pleades not to it within a convenient time, the Prothonotary will

ſigne *judicium pro quer'*, then a *nichil dic'* is entred up againſt the defendant, and a writ of inquirie of damages awarded upon the roll; *videl'*, *Sed quia neſcitur quæ dampna idem quer' ſuſtinuit occaſione conventionis fractæ, prec' eſt vic' qd per ſacrament' proborum & legalium hominum de Com. ſuo diligenter inquirat quæ dampna idem quer' ſuſtinuit, tam occaſione premiſſ. quam pro miſ' & cuſtag' ſuis per ipſum circa ſectam ſuam in hac parte appoit', & inquiſitionem quam &c. vic' conſtare fac' hic in Oct. Sanct.* Mich' *ſub ſigillo &c. & ſigillis, &c. Ad quem diem hic ven' prædict. quer' per Atturnat' ſuum prædict. & Vic'* videlt', H. W. *Armig. modo mand' hic quandam inquiſitionem coram eo apud D. in Com. prædict. decimo die A. ult. præterit. per ſacrum.* xii. *&c. capt. per quam compert. exiſtit qd prædict. quer' ſuſtinuit dampna occaſione premiſſ. ultrà miſ' & cuſtag' ſua per ipſum circa ſect' ſuam in hac parte appoit' ad* 40. s. *Et pro miſ' & cuſtag' ill' ad* 2. d. *Ideo conſ. eſt qd prædict. quer' recuperet verſus præfat. def' dampna ſua prædicta ad* 40. s. *& 2. d. per inquiſitionem prædictam, in forma prædicta compert. necnon* 4. l. *&* x. s. *eidem quer' ad requiſitionem ſuam pro miſ' & cuſtag. ſuis per Cur. hic de incremento adjudicat', quæ quidem dampna in tota ſe attingunt ad* 6. l. 16. s. 2. d. *Et prædict. def. in mia' &c.*

And note, that the Sheriffe having a writ of inquirie of damages directed to him, hee may raiſe the Jury out of what place of the County hee pleaſes, notwithſtanding any libertie.

Note, in an action of covenant the plaintiffe may

may assigne divers breaches: but in an action of debt upon a bond for performance of covenants, he must assigne but one; but let that bee such a one as hee is sure he can prove.

Debt.

DEbt lies properly where one man oweth another a summe of money by bond, bill, bargain, or certaine contract.

If a man oweth another x. l. and hath a *memorandum* under his hand without a seale, an action of debt upon a *mutuat'* lies, and then the defendant may wage his law; or an action of the case, and then the defendant cannot wage his law.

Also if a man deliver stuffe to a Tailor to have a suite and cloake made, and the price is agreed upon what the Tailor shall have, now the Tailor for non-payment shall have an action of debt: but if it be not agreed upon beween them what the Tailor shall have, then an action of the case lies onely, *tantum quantum rationabiliter meruit habere.*

So, if money be due upon any specialty, an action of debt lies onely.

Debt lies against the heire of the Obligor, if the executors have not sufficient; but *nichil per discent, sum* is a good plea for the heire.

If a man die intestate, or making a will, the Executors renounce, the Creditor shall have his action against the Ordinary; yet if the Ordinary plead *qd nulla bona seu catalla devenerunt ad manus*, and if any

doe come, hee shall bee charged no further then the goods will goe: and if the Ordinarie die, an action lies against his Executors.

If a man take a wife that is in debt, the husband during the coverture is liable to pay her debts, but after her death hee is not, unlesse there bee a judgement against them both during the coverture, which judgement he shall satisfie.

If a *Feme sole* hath a lease of lands for life, rendring rent, and marryes, and then the rent is behind, and the wife dies, an action lies against the husband for this rent, because hee received the profits of the land.

If a *Feme sole* have owing her 100. l. by bond, and marryes, and dyes, the husband shall not now recover this money, unlesse hee take administration of the goods of his wife.

So, if there bee two Obligors, and one die, the bond accrues to the surviver onely, and the Executors of him that dies shall not joyne, nor have any profit by the bond.

A man shall bee charged for his bailiffes or servants contract, where hee gives warrant to his servant to sell and buy for him; and if the wife contract, having authority from the husband, hee shall performe it, otherwise not.

If a man demises by word of mouth house and lands for seven yeeres, rendring rent, hee may bring his action of debt for the arrerages, and the defendant shall not wage his law.

If I make a leafe for certain yeeres, rendring rent, that's

that's a rent ſervice, then am I at liberty to diſtraine or bring an action of debt; but if the leaſe bee determined, and the rent arrere, then I cannot diſtrain, but muſt bring my action of debt.

And if the Leſſor dye, then in caſe the rent bee arrere, an action of debt onely lies, and that by the heire who hath the reverſion, for the rent is alwayes incident to the reverſion.

A leaſe for yeeres made reſerving a rent, the Leſſor may have ſeverall actions of debt for every yeers rent.

Upon a bond, or bill penall for payment of ſeverall ſummes of money, no action of debt lies till all the dayes bee paſt; it is otherwiſe upon a bill ſingle, there after the firſt failer an action lies.

But, if a man bee bound in a recogniſance to pay 100. l. at five ſeverall dayes, after the firſt failer of the firſt ſumme, hee ſhall have execution for that ſumme, and ſhall not ſtay till the laſt day bee paſt: and ſo obſerve the diverſity betweene a debt due by recogniſance, and a debt due by bond; and ſo it is for a covenant or promiſe, after the firſt default, an action of covenant lies for the one, and caſe for the other; and note that diverſity.

If two men put themſelves in arbitrement, without any writing betwixt them, and the Arbitrators award that one ſhall pay the other x. l. now hee ſhall have an action of debt for the x. l. upon this arbitrement; or caſe if hee will.

So, if an action of accompt bee brought againſt one as bailiffe, and hee accompt before Auditors,

and

and hee is found in ſurpluſage, that hee hath expended more then he hath received; for this ſurpluſage hee ſhall have his action of debt: and ſo ſhall a Receiver in the like caſe.

No Wager of law lies here.

An Atturney ſhall maintaine his action of debt for fees and monies laid out for his client; but a Sollicitor cannot maintaine his action unleſſe hee belongs to a Nobleman, who is to allow him what monies hee layes out for his Lord: So ſhall a ſervant maintaine his action on the caſe for disburſing monies, and following his Maſters buſineſſe. An Atturney may ſollicite in any Court, and ſue for his fees; and ſo may a Student of the law.

A generall Sollicitor is not a calling the law takes notice of, nor can he ſue for his fees: hee is not upon record as an Atturney is.

If a man covenant by word of mouth to doe ſuch an act for a certaine ſumme of money, and I give him xii. d. or more as earneſt, and a day ſet downe for the reſidue, if hee doe it not accordingly, I cannot bring an action of debt, but an action upon the caſe.

If a man bee in execution upon a judgement of 100. l. at my ſuite, and hee eſcape out of priſon, I may bring my action of debt for that 100. l. againſt the Sheriffe: but had hee beene in priſon upon a meane proceſſe, then I muſt have brought my action of caſe againſt the Sheriffe.

If a priſoner ſhall eſcape out of the Fleet, an action lies againſt the Warden of the Fleet.

If a man deliver wares to another for x. l. to bee

payd

payd at a certaine day, if the money bee not payd at the day, an action of debt lies upon an *emisset*, and then the defendant may wage his law; or hee may bring an action of the caſe, where there lies no wager of law: for your better underſtanding, take a breviat of a Preſident.

John Man is plaintiffe in an action upon an *emiſſet* againſt *William Gould*; the plaintiffe in his count ſets forth, hee bought ſo many parcels of ſtuffe at ſeverall dayes as came to xxx.l. and layes a *mutuat'* for x. l. more, which is in all xl. l. *per quod actio, &c. Et inde produc. ſectam &c.* To this the defendant pleads,

Quoad xxx. l. *de prædict.* 40. l. *quas prædict. quer' virtute emptionis prædict. ſuperius exigit verſus eum dic. qd prædict. quer' actio non &c. quia dic. qd ipſe tempore emptionis prædict. fuit infra ætatem* 21. *annorum. Et hoc parat. &c. unde pet. judicium ſi actio, &c. Et quoad prædict.* x. l. *de deb. prædict. quas prædict. quer' virtute mutui prædict. ſimilit' exigit verſus eum, dic. qd actio non &c. quia dic. qd ipſe tempore mutui prædict. ſimilit' fuit infra ætatem* 21. *annorum. Et hoc parat' eſt verificare unde pet. judicium ſi actio. &c.*

The defendant to the *emiſſet* pleades *deins age*, and to the *mutuat' deins age.*

Et prad' quer' quoad prad. placitum prad. def. quoad prad. x. l. *quas prad. quer' virtute mutui prad. exigit verſus eum præcludi non &c. quia dic. qd prad. def. tempore ejuſdem mutui fuit plene ætatis* 21. *annorum & amplius & non infra ætatem prout prad. def. ſuperius allegavit. Et hoc pet. qd inquiratur per patriam et prædict. def. ſimilit'. Et quoad prædict. alterum placitum*

Replicaion as to the *mutuat.* the defendant *non fuit infra ætatem*, and iſſue *ſur ceo* and as to the *emiſſet.* that the wares were bought for neceſſary apparell.

placitum predict. def. quoad predict. 30. l. quas ipse virtute emptionis predict. superius exigit versus eum idem quer' dic' qd precludi non &c. quia dic' qd prad. mercimonia per prafat' def. de eodem quer' in forma predict. empta fuerunt empt' de eodem quer. pro necessario apparat' & vestit. corporis prad. def. grad' suo eadem requiren. Et hoc &c.

Rejoinder as to the wares they were not bought for necessary apparell, and issue thereupon

Et predict. def. quoad predict' placitum prad ict. quer' quo ad predict. 30. l. per eundem def virtute emptionis prad. superius exact. replicand. placitat dic. qd predict. mercimonia per ipsum in forma predict. empta non empt. fuerunt de predict. quer' pro necessario apparat. & vest' corporis ipsius def. prout prad. quer' superius inde allegavit. Et de hoc pon. se super primam &c. Ideo quo ad triand. tam. exitum istum quam, &c.

So upon triall at the Assises *quo ad le remisset* the Jury find that part to bee for necessary apparell, and so it was imployed. *Et assid. dampna ipsius quer. ad 3. l. ultra mis. &c. et pro mis. &c. ad 20. s.*

Note the damages and costs the Jury do assesse and after what costs the Prothonotary signes upon the *postea* are all cast up together, and Judgment entred up for all, and execution thereupon for the whole.

Et quoad le mutuat. le Jurie trove le def. debits ugr then is Judgement entred up thus, viz. *Ideo consid. est qd predict. quer' recuperet versus prafat. def. 30. l. de deb. prad. & dampna sua predict. ad 4. l. per Jur. predict. in forma predict. assess. nec non 6. l. & 8. d. eidem quer. ad requisitiam' sum pro mis. & custag. suis predict. per curiam hic de incro adjudicat. quar' quidem dampna in toto se attingunt ad 10. l. & 8. d. Et prad. def. in mia' et sit' prad. quer' in mia' prasti' claus. suo versus prafat' def. dereliq. deb. pred. unde ipse acquiet. exist. Et idem Carolus eundo sine die, &c.*

When

Where a man is robbed betwixt Sun and Sun, and and thereupon takes his oath before the next Justice of Peace, and there is hue and crie and the theefe not taken, the party foe robbed may sue the hundred where hee was robbed, and shall recover; the question is, where the *venire* shall arise; it should of course arise where the fact was done, but it were against reason that a Jury should come from that hundred who are all defendants, for so defendants should be Judges of there owne cause; the *venire fac'* shall therefore be awarded specially, and the *venire* shall arise out of the hondred *Prest. adjourn'*.

An Infant is liable to pay for his meat and drink, apparell, phisick, and also for his teaching and good instruction, but if he shall bind himselfe by bond for the payment of any of these, *infra ætatem* is a good barre to the bond; *Causa patet*.

An Infant must sue by his *prochein amye*, and defend by his *guardian*.

If a man have obtained a Judgement against another in any Court of Record, he may bring an action of debt upon that Judgement; to that the defendant may pleade *nul tiel record*, for no other plea lies in that case, as I take it.

An action of debt will lie for an amerciament in a Court Baron, to which purpose, that you may understand it the better; here is a breviat of a good president.

Wilts. The plaint is pleadable against *William Pitt* and in his Counsell sayth that hee is tenant of the Manor of *Wrightam* in *Com' Southamp'*. and that the

defendant is alſo ſeiſed of an Houſe & 100. *acris terre*, 40. *acris prati*, et 40. *acris paſture cum pertin' in Mynſhall. unde duo vlan. paſture continen.* 20. *acr. ſunt parcell cujuſdem communis Campi voc. D. in M. predict.* Then he ſhewes the defendant holds thoſe Lands of him by fealtie, rent, and ſuite of Court; then he preſcribeth that hee and all his tenants, have time out of mind, uſed to have common of Paſture in thoſe two cloſes *parcell' communis campi voc. D.* at all times of the yeare when it was not ſowen; then the plaintiffe likewiſe preſcribes to keepe a Court baron from three weeks to three weeks, to enquire of nuſances and other miſdemeanors of the tenants, and ſo to preſent them, and being preſented to amerce and fine them according to the demerit of the offender; and then ſayes, hee keeping Court ſuch a day, the defendant was preſented for incloſing of thoſe two cloſes parcell of the common field *voc.* B. *& tenuit in ſeperalitat. quetuns debuer' aperta cum eodem campo ſecundum antiquam conſuetudin.* and ſo the defendant was amerced 20. s. to be paid at ſuch a day, at which day he did not pay, and the ſecond Court day hee was a ſecond time amerced to 20. s. for ſtill incloſing it, *qua quidem amerciament. attingunt ad* 40. s. *per quod debito accrevit &c.* to this the defendant pleades *nil debet per legem*, and juſt after the plea Judgement is entred upon this, *Idem dies dat. eſt prefat. quer. hic, &c. Ad quem diem ven. tam pred. quer. per attorn. ſuum pred. quam pred. def. in propria perſona ſua. Et ſuper hoc idem def. perfecit inde legem ſuam ſe duodec. man. prout il. ſuperius*

inde

inde vad. Ideo conſ. eſt qd prediſt. quer' nichil capiat per breve ſuum prediſt. ſed ſit in mia' pro fle. clam. ſuo. Et a prediſt. def. eat inde ſine die, &c.

When a Judgement is ſatisfied, the plaintiffe is to acknowledge ſatisfaction upon record, at the requeſt and charges of the defendant; the forme whereof is thus,

Poſtea ſcilt' nono die Junii Anno regni domini Regis nunc octavo ven' hic in cur. pred. quer' per I. W. attorn' ſuum per ſpeciale warrantum ei in hac parte conſtitut. & cognovit qd ſatisfactum eſt ei de debito & dampnis prediſt. Ideo prediſt. def. de deb' & dampnis illis ſit quiet' &c.

If ſatisfaction be acknowledged in the vacation, it muſt be before a Judge, and then the forme is thus,

Poſtea ſcilt' nono die Anno regni domini Reg' nunc octavo Georgio Vernon *uno Juſtic. dom. Reg. de Banco apud cameram ſuam ſituat' in Serjeants Inne in* Chancerie lane *London. ven. prediſt. quer' per attornat. ſuum prediſt. Et cognovit ut antea.*

If a man binde himſelfe and his heires in 100. l. and dyes, his heire is liable to pay the debt, if hee have lands by deſcent in fee ſimple, elſe not.

Hen. Smith brings his action of debt upon a bond againſt *Hugh Browne*, as heire to his father, and Counts that his anceſtor became bound by obligation of 100. l. for the payment of 50. l. &c.

The defendant confeſſeth the bond to be his fathers deed, *ſed dic qd poſt confectionem aliquid verr' ſeu tenementa per diſcenſ. deſcendit ei &c.* tionis

tionis brevis original' predict. quer' nec unquam poſtea prat. decem acras terre cum pertinent. in B. *in com'* S. *ann. valoris* 40. s. *Et hoc parat. eſt verific. unde pet' judicium ſi predict. def. ut filius & heres predict.* A. B. *patris ſui de deb. prad. praterq. in prado decem acris terre in* B. *predict. onerari debeat &c.*

Et predict. quer' proteſtando qd prad. decem acre terre non ſunt ann. valoris 40. s. *pront &c. pro placito pro citiori executione de deb. predict. ſibi fiend. dic. qd predict. def. die impetrationis brevis origin. ipſius quer' ſcil't* 10. *Aug. Anno* 6. *Jac' habuit diverſa alia terras & tenements ultra prad. decem acras terre in* B. *predict. per diſcenſum hereditar. de prefat'* A. B. *patre ſuo in feodo ſimplici unde eidem quer' de debito predict. ſatisfeciſſe potuit viz. apud* B. *predict. Et hoc pet' qd inquiratur per patriam. Et pred. def. ſimilit.*

Note if an action of debt be brought for 40. l. and the plaintiffe declares upon a bond of 30. l. for part, and a *mutuat'* for 10. l. *reſid.* the defendant confeſſeth the action of 30. l. bond, and as to the *mutuat'* he pleades *nil debet per patriam*: now Judgement and coſts ſhall be reſpited *quoad* the 30. l. bond till the iſſue upon the *mutu'* be tried, and then Judgement ſhall be entred, and coſts ſigned for both together.

Et quia conven' eſt, et neceſſ. qd unic. fiat taxatio damp. &c.

But the plaintiffe may enter *nolle proſeq.* for the 10. l. if he will, and ſo have his execution preſently for the 30. l.

If a man bindeth himſelfe, his executors are bound though they are not named, but ſo it is not of the heire.

If

If a rent charge be granted to a man and his heires, hee ſhall not have a Writ of annuity againſt the heir of the grantor, albeit hee hath aſſetts, unleſſe the grantor bind himſelf and his heires.

If a man take away any of the goods of the teſtator, the executors ſhall bring the action, becauſe they are to have all the perſonall eſtate.

But if a Gentleman be buried in a Church, and have his coate armour, or ſuch enſignes of honour belonging to his degree ſet up in the Church; or if a grave-ſtone or toombe be laid in memory of him, if they bee defaced, though the freehold of the Church bee in the Parſon, yet cannot the Parſon or any other take them or deface them, but the heire, in honour and memory of whoſe anceſtor they were ſet up, may bring his action.

Alſo an action of debt lies againſt one for not performing an arbitrement; and in this caſe the defendant may plead *qd Arbitr. nullum fec. arbitrium*, then the plaintiffe replies *qd fec' arbitr.* and ſets forth what the award was, and aſſignes a breach; then the defendant *vt prius dic. qd arbitr. nullū fec' arbitr.* and ſo iſſue is joyned: Now upon triall it lies upon the plaintiffs part to prove the award, you muſt get good preſidents and ſee theſe pleadings at large, which I give you but a taſte of.

If an Uſurer or any other ſhall take ſo much uſe as ſhall exceed 8. l. in the hundred for one yeare, when the obligee puts the bond in ſuite, and counts the defendant may pleade the ſtatute of uſury made *Anno 21. Jac.* then the plaintiffe muſt replie that this

this debt is a juſt debt. *Abſque hoc quod corruptè agreatum fuit inter quer. & def. contra formam Statuti.* So the defendant rejoynes, *ut prius dic. qd corruptè agreatum fuit inter quer. & def. contra formam Statuti. Et de hoc ponit ſe ſuper priam' &c.* and ſo iſſue is joyned: If the defendant upon triall prove that there was ſuch a corrupt agreement, the bond ſhall bee voyde, and the defendant is acquitted of this debt.

A leaſe made meerely upon the lone of money, if the conſideration come to above 8. l. *per centum*, this comes within this Statute, and the leaſe is voyd.

If after the ſealing and delivery of a bond, any word be raſed, or any thing altered, when this bond is put in ſuit and declared upon, the defendant may pleade *non eſt factum* ſpeciall, that at the time of the ſealing and delivery of the bond by the defendant, ſuch a word was writ plaine, without raſing, and ſince his ſealing and delivery thereof, that word was altered or raſed out, and another put in its place: *Et ſic idem def. dic. qd ſcriptum illud non eſt factum ſuum, & de hoc ponit ſe ſuper priam' &c.* If the defendant upon triall prove this, hee ſhall avoyde the debt.

So, if a man cannot write or read, and is content to bee bound in a bond of 40. l. with a condition for the payment of 20. l. and hee that drawes the bond makes it in 100. l. for the payment of 50. l. and tels him, and reads it to him to bee for 40 l. for the payment of 20. l. to this the defendant may pleade, that at the time of the making of the bond hee

hee was illiterate, and could neither write nor read, and that the bond was read to him to bee but 40. l. for the payment of 20. l. and hethinking it had been no more, ſigned, ſealed, and delivered it: *& ſic idem def. dic. qd ſcriptum illud non eſt factum ſuum: & de hoc ponit, &c.*

If a man ſigne and ſeale to a bond or bill, and doe not deliver it as his act and deede, this is not enough, for the maine point is the delivery, which the plaintiffe muſt alwayes prove upon all ſuch trials.

So, if a man ſigne and ſeale to a bond, and deliver it with a condition, if ſuch a thing bee done on the Obligees part, otherwiſe to be at a ſcrole; now if the Obligee doe not this thing, hee may pleade this ſpeciall matter, which ſhall be a good barre.

These bee many other of this kinde, which, for brevities ſake I will omit.

If an action of debt bee brought upon a bond, with a condition to pay the money at ſuch a day; if the defendant pleade a tender at the day in the condition mentioned, and iſſue is taken thereupon, the defendant muſt bring the money in Court, for hee muſt ſay, *parat fuit, &c. & adhuc paratus eſt, & fuit, &c.*

In like manner it is where a man is to pay rent at ſuch a time and place, and an action is brought for this rent, and hee pleade, that hee was ready at the time and place appointed, and the plaintiffe, nor any for him was there to receive it; this is a good plea, and ſhall ſave coſts.

And

And note, that a man cannot pleade a tender after an imparlance.

Hillar' quinto Caroli, *Boughton* high Sheriffe of Somerſet puts his bond of 40. l. in ſuit for non appearance, the defendant pleads *comperuit ad diem*, the plaintiffe replies, *nul tiel record comparencie*, and the defendant rejoynes *qd habetur tale recordum*, and ſo for proofe, the defendant muſt produce the record in Court.

Trin' octavo Jac'; *Debt ſur oblig' de ſaver harmeleſſ, def. pleade non dampnificat'; quer' replie*, and ſhewes a ſuite againſt him, and that hee did appeare, *& ſic dampnificat' fuit: def. ut prius dic' qd quer. non damnificat' fuit. Et de hoc ponit ſe &c.*

Hillar. duodecimo Jac'; Debt by *Stringwood* againſt *Bollard*, upon a bond for performance of covenants in an indenture, and ſo recites the covenants betwixt them, *proteſtando*, that the defendant *non performavit aliqua &c. pro placito quod permiſit ſepes*, videlt', C. *particat' ſepium &c. parcel tenementor' pred. cum pertinent. ſuperius dimiſſ. fore ruinoſ. irreparat', & in decaſu contra formam, &c. Def. dic' qd ipſe à tempore confectionis, &c. hucuſque bene & ſufficienter reparavit & manu tenuit ſepes & foſſat' &c. ſecundum formam &c. abſque hoc quod idem def. permiſit ſepes eſſe ruinoſas & in decaſu &c. contra formam &c. prout &c.*

Quer' ut prius dic. qd def. perm' &c. Et hoc pet &c.

Note, if a man bee bound to doe ſuch an act upon demand by covenants, this demand is traverſable.

If a Gentleman of the Innes of Court be in arrest for his Commons, the Treasurer of that Innes of Court shall bring his action.

Stilt decimo Car. Debt upon a bond is brought against an Administrator who pleads specially, that the plaintiffe comment'd his suit by suing out his Originall such a day, and that the defendant before such day after, had no notice of the suit, and hee had fully administred before that day.

The plaintiffe replies, *protestando* that the defendant had notice before such a day of this suit, *pro placito*, that at that day *habuit diversa bona & catalla que fuerunt &c. Unde de debito illo satisfeciſſe potuit &c. Et hoc pet' &c.*

Where a man puts his horse to pasture, bargaining to give x.s. by the yeere, and so from yeere to yeere, so long as both parties thinke fit; here, for non-payment, an action of debt lies, and the plaintiffe must averre in his declaration, that the horse was in pasture from such a time till such a time, *per quod debit accrevit, &c.*

Note, all actions on the case, unlesse for words, all actions of accompt, actions of trespasse, debt, detinue, and replevin of goods and chattels, these actions must bee put in suit within five yeeres after cause of action: also actions of assault, and battery, and imprisonment are to bee brought within foure yeeres after cause of action; and actions on the case for scandalous words within two yeeres after the words spoken: If these severall actions be not

brought within this time, the defendant may plead the Statute of limitations made the 21. of King *James*, which plea is a good barre to any of the aforesaid actions, if they bee not brought within the time limited.

There is no time limited for specialties, as bonds, &c. but you may sue them when you will.

An action of debt lies by the Parson against the Parishioner for not setting out tythes, and that by the Statute in the second yeere of *Edward* the sixth, chap. 13. and there the Parson shall recover the treble value of the tythes so carryed away.

If a man shall forsweare himselfe in any Court of Record, Court Leete, Hundred-Court, or Court Baron, Stannary Court, &c. an action of debt lies upon the Statute of 5. *El.* for perjury.

8 *El. cap.* 2. If a man shall arrest another, or cause him to bee arrested in another mans name, without his consent, an action of debt upon the Statute lies.

32. *H.* 8. *c.* 30. An action of debt upon the Statute lies against an Attorney for not filing a warrant of Attorney.

If an action of debt upon a Judgement in a Court of record be brought, and the defendant plead *nul tiel record*, and the plaintiffe reply, *qd tale habetur recordum*, and a day is given for the plaintiffe to bring the record in Court for his proofe; if hee doth produce it, judgement is entred up thus for him, videlt', *Ad quem diem hic ven' tam pradict' quer. quam pradict' def. per Attornat. suos pradict'. Et super hoc visis, inspectis, & per Justic' hic examinat.*

Termino

Termino & rotulo prædict. per prædict. quer' superius allegat' eisdem Justic. satis constat quod tale habetur recordum recuperationis prædict. in Cur. hic residen. quod idem quer. superius allegavit. Ideo consideratum est qd prad. quer habeat executionem versus præfat. def. de deb. & dampnis prædictis, &c.

Inter Comit' Bath & Brent; the plaintiffe brings an action of debt upon a former judgement in the Kings Bench, the defendant fues out a writ of errour, and removes the record into the Exchequer chamber, and the defendant then pleads *nul tiel record*; but the plaintiffe was non-fuited for want of a replication: Note the reason.

Upon a triall at Aſſiſes, or at Barre, and the Jury finde againſt the plaintiffe, judgement is entred up thus, videlt', *Ad quem diem Jurat. inter partes prad. de prad. placito poſit' fuit inde inter eos inveſpeſtum hic uſque ad hunc diem*, ſcil't, *à die Paſchæ, in quindecim dies tunc proxim. ſequent. niſi Juſtic. Domini Regis ad Aſſiſas in Com. prad. capiend. aſſign. per formam Statuti &c. die Mercurii decima die Martii prox' præterit' ad T. in Com. prædict. prius veniſſent*; *Et modo hic ad hunc diem ven. prad' def. per Atturnat' ſuum prædict. & præfat' Juſtic' ad Aſſiſas, coram quibus &c. miſ. hic recordum ſuum in hac verba, Poſtea &c. Ideo conſ. eſt qd prad. quer' nichil capiat per breve ſuum prædict. ſed ſit in mia' pro fo. clam' ſuo. Et qd prad. def. eat inde ſine die &c. conſ. eſt etiam qd prad. def. recuperet verſus præfat' quer' dampna ſua occaſione præmiſ. ad* xxx. *s. eidem def. per diſcretionem Juſtic. hic ad requiſitionem ſuam pro miſ.*

The entry up of theſe ſeverall judgments will give you great light being well obſerved.

& cuſtag. ſuis in ea parte ſuſtentat' juxta formam Statuti &c. per Curiam hic adjudicat &c.

So, when the plaintiffe is non-ſuited at the Aſſiſes, judgement is entred up thus,

Ad quem diem ut antea &c. uſque. Ideo conſ. eſt quod prad. quer' & pleg. ſui de proſ. ſui inde in mis' &c. quer' nomina pleg. Et quod prad def. eat inde ſine die &c. conſ. eſt etiam q d prad. def. recuperet verſus prafat' quer. dampna ſua occaſione praemiſſ. ad lxx.s. *eidem def. per diſcretionem &c.*

If an action of eſcape bee brought againſt a Sheriffe, if hee pleade a *ſuperſedeas* for his diſcharge, it is good: or if hee plead that he was taken againe upon freſh ſuit.

If a man have a judgement againſt one at the common Law, and have ſued out divers executions thereupon, and beene at much charges, and nothing done; perhaps hee hath beene at more charges then the coſts upon the execution comes to, hee may helpe himſelfe in arreſting the defendant upon a meane proceſſe, and declare in an action of debt upon the former judgement, to which the defendant can pleade nothing but *nul tiel record*; and ſo if the plaintiff prove by the record that he had ſuch a judgment unſatisfied, hee ſhall recover upon this action, and ſhall have coſts taxed the ſecond time.

If the debt be upon a penall bond or bill, he ſhall not need this way, for that hee may helpe himſelfe out of the penalty.

If a man ſhall bring an action whereupon hee hath had a former judgement, the defendant may

plead

pleade his former judgement in barre.

If a man buy an house of another for mony, which money is to be paid upon demand, this money becomes not due till a demand be made, and then upon denyall, or non-payment, which is a denyall in law, the action accrues; and it must bee demanded before the party sued, else the defendant may plead specially no demand was made, which is a good plea, and issuable.

But if money bee to bee paid upon a bill under seale upon demand, there it must bee demanded before 'tis due, and the plaintiffe must lay a demand: but the defendant cannot plead no demand to specialtie, for the putting of him in suit is a demand.

So, if no time of payment be set downe in a bond or bill, it is to bee paid upon demand; and if it bee denyed upon demand, there the action accrues, and the plaintiffe may maintaine his action.

If no place of payment be set downe in the bond, the Obligor ought to seek after the Obligee *vbicunque fuerit in Anglia*, and pay him the money.

But if the place bee set downe, if hee come there at the time and place set downe, ready to pay the money, and none there to receive it, hee may plead tender, and with his plea bring the money in Court, and he shall be discharged.

Note, A release made by executors before probate of the Will is void; but the Executors may sue an action for the debts of the Testator before probate

law.

An Administrator cannot release before letters of administration committed.

A release sealed and delivered is a barre to an action of debt upon a bond, if the bond were delivered before the release: so it is a barre to all other actions before.

Detinue.

A Writ of detinue lies where one delivers goods or chattels to another to keepe, if he will not redeliver them, then a writ of detinue lies.

And note, that a detinue ought to bee of a thing in certain, as a horse, a cowe, or money in a bagge sealed, or such certain thing; because the plaintiffe shall recover the thing detained, and therefore it must be so certain as it may be knowne; and therefore it lies not for money out of a bagge, or corne out of a sacke, for if a man deliver money to another, he cannot have an action of detinue, but an action of account.

A man may have an action of detinue for the evidences of his land, if they be in a box or bagge sealed up, then the writ runs thus, *de placito quod reddat ei unum plenarium cum cheriis scriptis & aliis munimentis in eadē pixide existentibus detinet &c.*

Note, a man may wage his law to an action of detinue, yet if a man brings his action of detinue for his evidences in a bagge sealed, and declares for one evidence in speciall, the defendant shall not wage his law.

The

The defendant may pleade to an action of detinue, *non detinet et de hoc ponit se super patriam, &c.*

The plaintiffe recovers in this action the thing detained, or the value thereof; which Judgement, if the defendant pleade not, but it paſſe againſt him by default, is entred up thus, viz. *Ideo conſ. eſt quod prad. quer' recuperet verſus prafat. def. predict. vaccam vel valorem ejuſdem. Et idem def. in mia' &c. Et prac. eſt vic' quod diſtring' prafat. def. per omnes terras &c. Et qd de exit' &c. ita qd reddat prafat. quer. pred. vaccam. Et per ſacram. probor' & legal' hom. de balliva ſua diligent' inquirat que dampna idem quer' ſuſtinuit tam occaſione detentionis vacc' pred. quam promiſ. et cuſtag. ſuis per ipſum circa ſectam ſuam in hac parte appoit. Et ſi predict. def. predict. vaccam eidem quer. non reddiderit tunc quantum vacc' pred. valet juxta verum valorem ejuſdem &c. Et qualit. &c. conſt. fac. hic &c. de die paſche in 15. dies ſub ſigillo &c. & ſigillis. &c. Ad quem diem hic ven' pred. quer. per Attorn. ſuum pred. Et Vic. videl't, T. H. Arm. modo quand' hic quondam inquiſitionem coram eo apud H. in Com' predict. decimo die Aug. prox. preterit' per ſacrament' duodecim &c. capt' per quam compert. exiſtit' qd predict. def. non reddidit prafat. quer' predict. vaccam, ac quod eadem vacca valet juxta verum valorem ejuſdem xxx s. Et quod pred. quer. ſuſtinuit dampna occaſione detention. vacc' e predict. ultra miſ. & cuſtag. ſui per ipſum circa ſectam ſuam in hac parte appoſit. ad xx s. Et pro miſ. & cuſtag. illis ad xx s. Ideo conſ. eſt qd predict. quer' recuperet verſus prefat. def predict. xxx s. pro valore predict.*

predict. vacc', et dampna ſua predict. ad lx. s. per inquiſitionem predictam in forma predicta compert., necnon lxvi. s. eidem quer. ad requiſitionem ſuam pro miſ. & cuſtag. ſuis predict. per Curiam, hic de incremento adjudicat. que quidem dampna in toto ſe attingunt ad vi.l. vi.s. Et pred' def. in mi'a, &c.

Hereupon there goes forth a *diſtringas* againſt the defendant *ad reddend' præfat quer. vaccam predict. quam idem quer. in curia noſtra coram Juſticiar. noſtris apud Weſt. recuperavit verſus eum vel 80. s. pro valere ejuſdem vacc. eidem quer. in eadem cur. adjudicat. unde convict. eſt precipim. etiam tibi &c. ad ſatisfaciend' præfat. quer. de 6. l. 7. s. quæ eidem quer. in eadem cur. noſt. adjudicat. fuerunt pro dampn. ſuis quæ habuit occaſione detentionis vacc' prad. unde convict. eſt. Et habeas &c.*

If the defendant ſhall pleade to this action of *detinue* the generall iſſue non *detinuit*, or other ſpeciall matter, whereupon iſſue is joyned and triall upon a verdict Judgement is entred upthus, *viz. &c. per quos &c. et qui nec &c. ad recogn. &c. quia tā &c. Ad quem diem Jurat. inter partes pred. de pred. placito poſit' fuit inde inter eas inveſpem' hic uſque ad hunc diem ſcilt. à die paſche in 15. dies tunc prox. ſequen. Niſi Juſtic. dom. Regis ad Aſſiſas in com. predict. capiend' aſſign' per formam ſtatuti, &c. die pred' meraviſi ſecum die Martii apud C. in com. prius veniſſent. Et modo hic ad hunc diem ven. prad. quer. per attornat. ſuum pr adict. E præfat. Juſtic. ad aſſiſas eor. eum quibus &c. miſ. hic recordum ſuum in hec verba. Poſtea &c. & ſic vacat, tota ſi poſtea. Idem venſ.*

eſt

eſt q̃d prad. quer. recuperet verſus præfat. def. æquum prad. vel prad. 100. l. pro valore ejuſdem ſi cum re-habere non poſſit, & dampna ſua prad. ad octo dena-rios per Jur. prad. in forma prad. aſſeſſ. necnon 10. l. 19. s. & 4. d. eidem quer. ad requiſ. ſuam pro miſ. & cuſtag. ſuis prad. per Cur. hic de incrc. adjudicat. quæ quidem dampna in toto ſe attingunt ad 11. l. Et prad. def. in miſ. &c.

The heire ſhall bring an action for the evidences of his lands, and not the executors.

Note, that in declarations in debt, covenant, account, annuity, detinue, and replevin, you ſay, *ſum. fuit ad reſpondend.* and not *attach. fuit &c.* and in caſe treſpaſſe, *trover, ejectionis firmæ*, you ſay, *attach. fuit*, and not *ſum. fuit, &c.*

Execution.

YOu ſhall underſtand when Judgement is obtained againſt any, for debt or damages, by *nichil dic.* or by verdict, the law gives him choice of three ſorts of executions, viz. a *capias ad ſatiſf.* againſt his body, 2 a *fi fa.* againſt his goods, 3 an *elegit* againſt his lands.

You may have any one of theſe, but one at one time; nor when you have taken forth a *ca. ad ſa.* 2. gainſt his body, ſhall you have a *fi fa.* againſt his goods till the returne of the firſt *cap. ad ſat.* be paſt.

If a man bee in priſon upon an execution at my ſuite, I cannot now meddle with his goods, but if he dye in priſon I may have execution againſt his goods.

Upon Judgement againſt an executor or adminiſtrator, the plaintiffe cannot have a *ca. ſa.* againſt the body, but a *fi. fa. de bonis teſtatoris*; and if the ſheriffe returne a *devaſtavit*, then a *ca. ſa.* againſt the body, or a *fi. fa. de bonis propriis.*

If a man have a Judgement againſt an executor or adminiſtrator, in caſe, the executor or adminiſtrator pleade *plene adminiſtravit*, execution ſhall goe forth to levie the debt, and damages *de bonis & catallis quæ fuerunt inteſtatoris tempore mortis ſuæ in manibus* H. B. *adminiſtratoris bon. & catall' quæ fuerunt inteſtatoris ſi idem adminiſtrator. tanta bona & catalla quæ fuerunt pred. inteſtatoris tempore mortis ſuæ in manibus ſuis adminiſtrand. habeat. Et ſi non habeat tunc dampna prad. de bonis & catallis prad. admin' propriis levãd.* Then Judgement hereupon is entred up thus, *Ideo conſ. eſt qd prad. quer' recuperet verſus præfat.* H. B. *adminiſtrator. deb. ſuum predict. de bonis & catallis quæ fuerunt pradict. inteſtatoris tempore mortis ſuæ in manibus ſuis adminiſtrand. Et dampna ſua ad 53 s. & 4 d. per juratores pred. in forma prad. aſſeſſ. necnon 9 l. 8 s. eidem quer' ad requiſic. ſumma per miſ. & cuſtag. ſuis pred. per eur. hic de incr. adjudicat. que quidem dam. in toto ſe attingunt ad 6 l. 13 s. 4 d. de eiſdem bonis & catallis ſi tantum in manibus ſuis hab. &c. Et ſi non habeat tunc dampna pred. de bonis & catallis ipſius adminiſtratoris propriis levand. Et idem adminiſtrator' in miſ. &c.*

Note, the coſts and damages the Jurie gives upon triall, and the coſts the Prothonotary after ſignes upon the *poſtea* are all caſt up, *que quidẽ dam. in toto ſe attingunt ad &c.*

Now

Now upon this execution, if the ſheriffe ſhall returne *quod ante adventum brevis iſtius idem adminiſtrator omnia eadem bona & catalla devaſtavit, & in uſum ſuum proprium convertit, per quod deb. & damp. pred. aut aliquam inde parcell. de bonis et catall. pred. fieri ſeu levari non potuit, &c.*

Hereupon ſhall go forth a *ſi' fa'* to levie the debt and damages *de terris et catallis ipſius adminiſtratoris propriis.* Which Judgement upon a *devaſtavit* returned, is entred up thus, *Ideo conſ. eſt q̃d pred. quer' habeat executionem de deb. et damp. pred. de terris et catall. ipſius adminiſtrator' propriis, &c.* or if the plaintiffe will hee may have a *cap. ad ſat.* againſt his body.

Note, if there be two Executors, and the Sheriffe returne a *devaſtavit* againſt one, and hee dies, the other ſhall not bee charged for that *devaſtavit*; for the one ſhall not prejudice the other; but a gift by one of them, or a ſurrender by one of them is good againſt the other.

If a man be in priſon upon an execution, and the plaintiffe releaſe all debts, by this is the defendant diſcharged of the execution: but if the plaintiffe ſhall releaſe all actions, here he is not diſcharged.

If a *fieri fac.* goe out againſt one, and the defendant hath not goods ſufficient to ſatisfie, the Sheriffe may take what hee hath in part, then the plaintiffe may have another *ſi. fa.* for another part, and ſo hee may have one *ſi. fa.* after another till hee bee fully ſatisfied: and when the defendant hath levied the goods, they muſt bee appraiſed by men indiffe-

rent; and then the Sheriffe may ſell them, and give the money to the plaintiffe: if the Sheriffe when he hath levyed the goods will not ſell them, but keep them in his hand, then ſhall iſſue a writ called a *venditioni exponas*, whereby the Sheriffe is compelled to ſell them, and the money which hee hath for them hee is to give to the plaintiffe, according to the tenour of the writ.

If a judgement bee had againſt a Parſon, you may have a *fi. fa.* againſt his goods; and if the Sheriffe returne *qd predict. def. Clericus eſt, & beneficiat. apud* H. *in Dioceſ. Lincoln', non habens aliqua bona ſeu catalla, neque laicum feodum in balliva ſua unde debitum predict. ſeu aliquem denar. inde fieri facere potuit:* hereupon a *fieri fac. de bonis Eccleſiaſticis* goes forth, by vertue whereof his tythes ſhall bee ſequeſtred; which *fi. fa.* is directed to the Biſhop in whoſe Dioceſſe he is Parſon.

If a judgement bee had againſt one living in Cheſter, your execution (becauſe it is a County Palantine) ſhall bee directed in this manner, *Camerario Com. Palantini noſtri Ceſtria, &c.* who directs his precept to the Sheriffe for the executing thereof.

The next is an execution called an *Elegit*, which doth extend to a moity of his lands, and alſo all his goods and chattels *preter boves & affros de carruca ſua*; and the plaintiffe ſhall hold halfe of theſe lands till the debt and damages bee wholly levyed and paid; and while the plaintiffe ſo holds theſe lands, he is tenant by *Elegit*.

And

And the tenant by *Elegit* ſhall doe no waſte.

By vertue of this writ the Sheriffe is to ſummon a Jury, which ſhall find his lands, and halfe of his lands ſo found the plaintiffe ſhall hold till hee be ſatisfied, and the Sheriffe is to deliver him ſeiſin of them.

Note, If a judgement bee obtained againſt a man, who doth thereupon ſell his land, this land, in whoſe hand ſoever it is, is liable to ſatisfie that judgement, and to that purpoſe there ſhall goe forth a *ſcire fac. verſus tertenentes.*

But if a judgement bee had againſt one, who thereupon ſells his goods before execution, theſe goods are not liable to a *fieri fac.*

Note, If an *Elegit* bee once awarded and gone out, and lands found and returned, and entred, and filed, you ſhall never take forth other execution, or another *Elegit.*

Note, If two writs of *Elegit* bee delivered to the Sheriffe at one time, the Sheriffe is to extend the moity of all the land, and ſhall give that moity to the more ancient debt, and then hee ought to extend a moity of the other moity, and deliver it to the other; for he ought not to deliver a moity of all the land to one, and the other moity to the other.

Note, This writ of *Elegit* takes hold of all the land the defendant was ſeiſed of at the time of the judgement againſt him, or at any time after: but if the defendant have ſold away his lands before the judgement, though it bee after the ſuit commenc'd, theſe lands are not liable to this judgement.

Note, That a man may have ſeverall *Elegits* into

ſeverall

severall Counties where the land lies; an Annuity may bee extended, and rents.

Note, If there be a *defeasance* upon a judgement, and notwithstanding the plaintiffe will take forth execution, and lay the defendant in prison, he may relieve himselfe by *audita querela*.

Copiehold lands shall not be extended.

An *Elegit* lies in Wales, or into any County: Ancient demesne land shall be extended by *Elegit*.

So an *Elegit* lies in Chester, but is to bee directed to the Chamberlaine of the County Palatine there.

For the execution of this writ of *Elegit* the Sheriffe is to summon a Jury, and to returne it by Inquisition.

Note, if a man die, and there are divers judgements against him, his heire being within age, no writs shall issue against his lands during the minority.

It is to be observed that these writs of execution are to bee sued out within a yeere and a day after judgement, else the plaintiffe must sue out a *scire fac'*; and if a *nichil* bee returned thereupon, an execution after a *scire fac'* goes out; or if the Sheriffe returne a *scire feci*, and the defendant at the day appear not (for the defendant may appear, and plead to a *scire fac'*) then execution shall go out: and to none of these writs of execution shall the defendant plead; but if hee have any matter since the judgement to discharge him of execution, as a release from the plaintiffe, hee may have his *audita querela*, and relieve himselfe that way, but plead hee cannot

cautor hoc vt a fiere fac' as before, &c.

When the Sheriffe hath returned the writ of Ele-git by inquisition, judgement is entred up thereupon, as foloweth.

Ad quem diem hic venit pred. quer. per Attornatum suum predictum Et Vic. venire fecit, A. B. Milites modo mand' hic quandam inquisitionem coram eo, apud H. in Com. pred. decimo die Aprilis vltimo preterito per sacramentum duodecim &c. captam per quam compertum fuit quod predict. def. die captionis inquisitionis pred. fuit seisit in dominico suo vt de feodo de & in uno tenemento, & nup pomario continent per estimationem tres rodas cum pertinentiis in H. pred. vic. com. pred. vnde vel nuper in tenura sive occupatione pred. def. vel assignatorum suorum, clari annui valoris in omnibus exitibus vltra reprisas xiiii. s. & iii. d. vt per duo Camere in Boreali fine predicti tenementi, quarum una Camera vocatur a lowey roome, & altera Camera vocatur a loft supra predict. Camerum vocat the lower roome, & other. latus predicti pomarii quarto fine predicti pomarii per quendam sepem in orientali & australi fine, Anglicè, the South-east end dict' pomarii, & per duas radices, Anglicè, two elderne stubs; in Boreali fine predicti pomarii per medium pomarii predicti & pomarii cum pertinentiis, eo quod medium pomarium est annui valoris in omnibus exitibus vltra reprisas xvi. s. quam quidem medietatem pred. vic' pred. die captionis inquisitionis pred' presat' quer' liber' ar' fec' per precium & extentum pred. quorum sibi de assignat' fuit, in liber' tenementis, finem, quietis servitiis & omnibus, quibusque

que

que debitum & dampna predicta inde leverentur juxta exigenc' brevis predict' &c.

Note, The Sheriffe may, by vertue of an execution, goe into the parties houſe, the doores being open, and execute his writ upon his body or goods, as the writ is.

The Sheriffe may breake open the doores, as I think, upon a *cap' utlagat'* after judgement, and take his goods or body; but if the parties goods bee in another mans houſe, hee cannot breake open his doores: if hee doe, it is a miſdemeanour, and puniſhable. But hee may take them away, finding them in another mans houſe.

In caſe you cannot take a man upon an execution, your beſt courſe will be to ſue him to an *ex. poſt Ca.* and being outlawed after judgement, you may ſeiſe upon goods and lands.

A judgement being had againſt a man, who dies & leaves no perſonall eſtate behind him, the plaintiffe may have a *ſcire fac'* againſt the heire, and if he plead not upon a rule given, *fiat executio per defaltam*, then may the plaintiffe have an *Elegit* againſt his lands.

Eſſoyne.

AN Eſſoyning is a kind of Imparlance, or craving of longer time.

An Eſſoyne lies in theſe ſeverall actions; in *Waſte, Partition, Quare impedit, Dower, Formedon, warrantia Chart. &c.*

Eſſoynes are caſt onely in theſe reall and mixt actions: But, as I ſaid before, the defendant that is

to

to wage his law may essoyne; as, Admit a declaration bee delivered in Trinity Terme, the defendant pleads a wager of law, which hee is to doe in *Oct. Mich.* following; if then the defendant come in Court, and doe his law, the plaintiffe is for ever barred to bring any other action for this debt; not shall hee have costs of the defendant; but if when the defendant is ready to doe his law, the plaintiffe will be non-suited, paying the defendant costs, this action falls, and the plaintiffe may afterward bring his action on the case, if hee bee able to prove the debt, and then the defendant cannot wage his law.

Now, if the defendant cannot come in at *Oct. Mich.* to doe his law according as he hath pleaded, he may then cast his essoyne that day hee should have done his law, and then the plaintiffes Attorney is to adjourne it till fifteene dayes after, which is *Octab. Mich.* at which day, if the defendant come not in to doe his law, judgement shall be awarded against him peremptorily, *quia non perfecit legem.* Now if the plaintiffe had not adjourned upon the defendants essoyne, the defendant might, the day following enter a *ne recipiatur*, and non-suit the plaintiffe with the Clarke of the essoynes, and compell him to begin againe.

If the defendant had not comen in and essoyned in *Oct. Mich.* the plaintiffe the day following enters a *ne recipiatur*, which is the exception day, and so judgement is had against him; the entries of these judgements before essoine and after as before I shewed before in this Debt, and wager of law.

Now, as I ſaid, an Eſſoyne lies in mixt and reall actions, as *waſte*, *Partition*, *Quare impedit*, *Dower*, *Formedon*, *&c.*

Waſte. The firſt writ in Waſte that iſſues out againſt the defendant, is a *ſum'*, which the Curſitor makes; and if the *ſum'* be returnable *quind' Paſ.* the defendant is to eſſoine in *quind' Paſ.* which if hee do, the plaintiffe adjourns till *quind' Paſ.* and then iſſues out from the Philazer a *Pone*, returnable *Craſt. Trin.* and then upon that returned by the Sheriffe, filing the *Pone* with the Philazer, he makes out a *diſtringas* returnable *tres Trin.* amercing the Sheriffe 5 l. if the defendant appeare not, then an *alias diſtring.* returnable *octo Mich.* ſetting iſſues 10. l. and ſo *diſtring. in infinit.* till hee do appeare.

Now if the defendant eſſoines in *quind' Paſ.* as before, and the plaintiffe adjourns it not, the defendant may enter a non-ſuite againſt the plaintiffe; firſt entring a *ne recipiatur* upon the day of exception with the Clerke of the eſſoines, and then the plaintiffe muſt begin againe.

And if the defendant will not eſſoine upon the firſt *ſum.* but appeare, then he loſeth ſo much time which he might have had.

And the ſame proceedings are in *quare Impedit*, *Partition*, and *warrantia Charte*.

And take this for a generall rule, So many defendants as there be, ſo many ſeverall times they may eſſoine, and ſo get ſo much the more time before they appeare.

As in a *quare Impedit* the firſt writ is a *ſum.* at the plaintiffes

plaintiffes ſuite (ſuppoſe returnable *octo Mich.*) and there be three defendants, the firſt defendant eſſoines in *octo Mich.* then the plaintiffe adjournes till *menſ. Mich.* then the ſecond defendant eſſoines, and then the plaintiffe adjournes till *quind' Martini*, then the third defendant eſſoines, and the plaintiffe adjournes till *oct. ab. Hillarii*, and then they can eſſoine no more; but a *pone* goes forth, returnable *oct. Puri*: and if they appeare not then a *diſtring.* returneable *quind' Paſche*; but the defendant in a *quare Impedit* will put off the appearance as long as hee can, hee being in poſſeſſion, and perhaps thereby get the fruits of one or two ſummers Harveſts.

Note, if a defendant in theſe actions eſſoine not upon the *ſum*, he may eſſoine upon the *pone*.

In Dower and Formedon, which are reall actions, the proceedings are different. The firſt writ in Formedon is a *ſum*, which hath nine returnes: now if the tenant eſſoine not, nor appeare by the returne hereof, a *grande Cape*, entring a *ne recipiatur*, goes out to ſeiſe the lands into the Kings hands; yet if the tenant will come in now and wage his law in Court, that hee was not ſummoned by the Sheriffe, hee ſhall hereby avoide the *grande Cape*. *Formedon.*

And if the tenant by the returne of the *ſum.* eſſoine, the demandant adjournes a 15. dayes longer, then the tenant enters with the Philazes, *tenens comparuit & pet. viſum &c.*

Then a writ of view goes out, whereby the Sheriffe is to ſhew the tenant the lands in queſtion; by returne of which writ of view, the tenants Attorney takes

takes a declaration: now if any default be made after appearance, then a petty *Cape* goes out at the demandants suite.

Also when issue is joyned, if the tenant have not had his writ of *view* before, he may now pray it and it shall be granted, and thereby he may put off a triall for that time.

The tenants in these kinde of actions, will put off appearance and triall as long as they can, being in possession.

Upon issue joyned, both sides may pray a writ of *view*, one after another, upon the *venire fac.* and so put off triall longer.

Dower. The like course of proceedings is in Dower, only the *summon.* thereupon is five returnes, whereas Formedon hath nine.

In these reall actions, as Dower and Formedon, the plaintiffe is called demandant, and the defendant tenant, and in mixt actions, plaintiffe and defendant.

The Attorneyes in this course of essoines on both sides are to be very vigilant and carefull in the casting of essoines, and adjournment of the same, as also in entring *nerreipias'* with the Clerke of essoines and getting non suits, for that thereby they may much prejudice or advantage their clients causes and I think many Attorneyes in this so necessary learning are very ignorant.

You shall understand that the course of suing an heire is by *sum.* and by the returne thereof, he is to essoine; if he essoine not at the day, causing a *nerreipias*, *&c.* goes out 5. dayes after; then if hee

essoine not, a *distring.* is awarded, and 5. l. issues, which the Sheriffe is to levie upon his land; and if he appeare not, then *distringas* after *distringas in infinitum*, till hee appeare: now if the heire come in by the returne of the *sum.* and casts an essoine, the plaintiffe must adjourne it, and if he do not adjourne it at the day, the defendant enters a *se recipiatur* and gives him a rule within three or four dayes, by which time if hee do not, the defendant non suites the plaintiffe with the Clerke of essoines.

Note, The defendant may essoyne by the returne of the *pone*, if he doe not upon the *sum'*.

The like course of proceedings are against a Noble-man or Peere of the Realme, first a *summ'*, then a *pone*, then a *distring'*; and so if hee appeare not, *distring' in infinitum*, and issues upon his land all this while.

An heire or a Noble man cannot bee arrested *per corpus*.

Nor can you properly sue a Noble man to the *Exigent*.

Waste is a mixt action, partly personall, and partly reall; reall, in that the plaintiffe recovers *locum vastatum*; and personall, in that hee recovers damages. *Waste.*

Ejectione firmæ.

THe forme of sealing an ejectment leafe is this; If a man have right and title to such an house and lands, hee may try it by this action of *ejectione firmæ*:

firme; and to that purpoſe hee muſt draw a leaſe *vera*, and make ſome friend of his owne, whom hee hath confidence in, leſſee, that ſo if hee recover in this action, the leſſee his friend, who is plaintiffe in the action, may ſurrender up the leaſe and houſe unto the leſſor who did ſo intruſt him for the tryall of his title. The courſe is thus, Hee that pretends title to the houſe and lands makes a leaſe for two or three yeeres, for ſo long as hee may be ſure to have a tryall and judgement before the time bee expired, and making this leaſe, goes with his friend the leſſee to the capitall houſe, where hee and his friend goe into the houſe, or ſtand within the doore, and the leaſe being ready drawne, hee ſeales and delivers it to his friend, and taking the ring of the doore in his hand, delivers the leaſe, mentioning the houſe and lands *cũ pertĩ* which are contained in the leaſe; ſo that now whoſoever ſtayes after in the houſe, you going away, he is an Ejector, and him you may arreſt, and make him defendant in the declaration, whether hee bee the Maſter himſelfe, or any of his ſervants; or whoſoever next after enters into the houſe is an Ejector.

Or, you may make one who is none of the houſe an Ejector by your owne appointment, thus, When you have ſealed and delivered the leaſe to your friend, as before is declared, he that you appoint for that purpoſe may goe into the houſe, and thereby, you going away, hee is becomen an Ejector; but now, becauſe hee is one of your owne procuring, you muſt bee ſure to give notice to the *terre* tenant

to

to defend the title upon the Ejectors appearance.

And if the *terre* tenant have but a leaſe, hee muſt give notice to the Lord in whom is the fee-ſimple, to bee ready with his evidences, and Counſell, and witneſſes to defend the title.

So, you may deliver the leaſe upon the lands in the name of the houſe and lands contained in the leaſe, and the next that comes upon the land after you are gone is an Ejector.

And if you dare not come neare the houſe for feare, goe as neare the houſe as you can, and deliver the leaſe.

The forme of the writ which you arreſt the Ejector upon is thus, *videl't*, *Rex Vic' Wiltſ. ſalutem: Precipimus tibi quod capias* Willhelm. Sanders *nuper de Winton in Com. H. yeom', ſi inventus fueris in baliva tua, & eum ſalvo cuſtodias, ita quod habeas corpus ejus coram Juſticiariis noſtris apud Weſtm in Oct. Sancti* Mich. *ad reſpondendum* Henrico Wilſon *de placito, quare vi & armis unum meſſuagium & 100. acras prati, cum pertinent. in Winton, que* Chriſtopherus Moreton *pref.* Henrico *dimiſit, ad terminum qui nondum preterit intravit, & ipſum à firmo ſua predict. ejecit, & alia enormia ei intulit, ad grave dampnum ipſius* Hi. *& contra pacem noſtram, & habeas &c.* This is the *cap'* to arreſt.

Here *Sanders* is ejector and defendant in the declaration, *Wilſon* is the plaintiffe and leſſee in truſt, and *Moreton* is the leſſor, whoſe title it is.

You muſt in the Count lay the very day of the entry,

entry, the very day you were ejected, else the leaſe is not good.

If the defendant pleade the generall iſſue, *non eſt culpabilis*, then muſt the plaintiffe prove the ejectment leaſe ſealed and delivered preciſely; and now is the title meerely in queſtion: and if it paſſe for the plaintiffe upon the verdict, the Jury give damages *occaſione tranſgreſſionis & ejectionis firmæ*, and the Court awards poſſeſſion alſo; whereupon ſhall goe out a writ *de habere fac' poſſeſſionem*, by vertue whereof the Sheriffe is to deliver poſſeſſion of the houſe and lands ſo evicted to the plaintiffe, and the *terre-tenant* is thereupon thruſt out. For the damages the plaintiffe ſhall have execution againſt the defendant the ejector onely: but yet hee who defended the title ought in conſcience to ſatisfie the damages, and ſo the Court will take order upon a motion, if the defendant bee a poore man.

If a man cannot come into the houſe to ſeale and deliver the leaſe, hee may ſeale and deliver the leaſe in the Curtilage in the name of all the lands and houſe in the leaſe contained, and this ſhall ſerve for the whole, if it bee an entire Barton or Farme: But if the land lies in ſeverall Pariſhes, and not altogether, then the leſſor muſt goe there where it lies, and deliver the leaſe thereupon; and hee that next comes upon that land after you are gone, is an ejector, whom you may arreſt, and hee is defendant in the ſuit.

If a verdict paſſe for the plaintiffe, the plaintiffes

tiffes Attorney calls for the returne of the *poſtea*, and carries it to the Prothonotary, in whoſe Office the cauſe is, and ſignes full coſts, and Judgement is entred hereupon, as followeth, upon the iſſue roll.

Ad quem diem Jurat' inter partes predict. de predict. placita poſit' fuit inde inter eas in reſpect' hic uſque ad hunc diem, ſcil't, *à die Paſche in quindecim dies tunc proximè ſequent', niſi Juſtic. Domini Regis ad Aſſiſas in Com' predict' capiend. aſſign. per formam Statuti, &c. de Jovis, viceſimo quarto die Martii proxim. preteriit' apud L. in Com. pred. prius veniſſent. Et modo hic ad hunc diem ven. predict' quer. per Attornatum ſuum predict. & preſat. Juſtic. ad Aſſiſas, coram quibus &c. miſ. hic recordum ſuum in hec verba poſtea*, (and ſo recite the whole returne of the *Poſtea*:) *Ideo conſ. eſt, quod pred. quer. recuperet verſus preſat. def. termin. ſuum predictum de & in meſnagio & tenem' predict. cum pertinent' adhuc ventur. & dampna ſua pred. ad 2.s. per Jur. predict. in forma predicta aſſeſſ. necnon 4.l. & 6.d. eidem quer. ad requiſitionem ſuam pro miſ. & cuſtag. ſuis predict., per Curiam hic de incremento adjudic', que quidem damna in toto ſe attingunt ad 4.l. 2.s. 6.d. Et pred. def. capiatur, &c. & ſuper hec predict. quer. 'pet' breve Domini Regis Vic' Com' pred' dirigend' de habere faciend. ei poſſeſſionem termini ſui predict. de & in meſnagio & tenem. pred. cum pertinent. adhuc ventur. & ei conceditur returnabile hic in Oct. Sanct. Trin. &c.*

Now a *Capias pro fine* goes out at the Kings

ſuit againſt the defendant, if hee compound not.

And hereupon is awarded an execution againſt the defendant for the damages, and a writ of poſſeſſion of the houſe and lands ſo recovered.

If the defendant pleade nothing to this action, but lets it paſſe by *nichil dic'* (which Judgement cannot bee had upon a common rule, as in actions of debt they paſs, and ſuch like, but by motion in Court) then is awarded a writ to enquire of damages, and alſo a writ of poſſeſſion, the entrie whereof follows.

Et pred' def. per &c. quando &c. Et nichil in barram actionis pred. quer' pred. dic. per quod idem quer' remanet verſus prefat. def. inde indefenſ. Ideo conſ. eſt qd pred. quer. recuperet verſus prefat. def. terminum ſuum pred. de & in tenementis pred. cum pertinen. adhuc vent' & dampna ſua occaſione tranſ. & ejectionis pred. ſed quia neſcitur que dampna idem quer' ſuſtinuit occaſione tranſgreſ. & ejectionis ill' prec' eſt vic' qd per ſacram. probor. & legal. homin. de com pred. diligent' inquirat. que dampna idem quer' ſuſtinuit tam occaſione tranſgreſ. & ejectionis pred. qm pro miſ. & cuſtag. ſuis per ipſum circa ſectam ſuam in hac part' appoſit. Et inquiſitionem quam &c. vic: conſtar' fac. hic in octab. Mich. ſub ſigill' &c. & ſigill' &c. Et ſuper hoc pred. quer. pet. bre. dom. Reg. vic. com. pred. dirigend. de hab' faciend. ei poſſeſſionem termini ſui pred. de & in tenementis pred. cum pertin' adhuc ventur. Et ei conceditur returnabil' hic ad prefat. terminum &c.

Upon which writ of enquirie of damages, for the execution

execution thereof the ſheriffe is to ſummon a Jurie where he will within his county, and they are to give what damages they thinke in their conſciences upon the evidences to be juſt, and alſo ſome coſts; which writ being ſo returned by the ſheriffe, the plaintiffes Attorney takes it out into the Remembrance, and ſignes coſts thereupon; and now is Judgement complete, and he may take forth what execution he pleaſe.

And when any writ of enquirie goes forth, it is faire practiſe for the plaintiffes Attorney to give the defendants Attorney warning thereof, that both may attend the Jury ſitting thereupon: the plaintiffes Attorney doth it alwayes, that ſo informing the Jurie and giving in evidence, hee may have the more damages for his client: and the defendants Attorney ſhould be preſent to defend and leſſen the damages againſt his client, what he can.

Parco Fracto.

AN action *de parco fracto* lies where a man diſtraines for damage feſant upon his land, or for rent, &c. and impounds the beaſts in pound overt; now if the owner of the beaſts or any other ſhall breake the pound and take the beaſts out, he which ſo impounded them ſhall have this writ *de parco fracto*.

Note, that a man muſt diſtraine and impound alwayes in the day time for rent and ſervices, &c. but if hee take the beaſts, damage feſant, then hee may impound them in the night, becauſe they may elſe be gone by morning.

If a man diſtraines for an amerciament in an hundred Court, and impounds the beaſts, and the beaſts be taken out, this writ *de parco fracto* lies; and then the plaintiffe muſt in his Count ſhew the propertie of the beaſts, to be in the defendant who was amerced.

Partition.

PArtition is where there are two or three, or more Coperceners of lands, or the like.

Where two or three or more hold lands or houſes *inſimul & pro indiviſo.*

Partition is when lands fall by deſcent to two, three, or four ſiſters, now they hold *inſimul & pro indiviſo.*

If any one of them deſires a Partition to have a part by her ſelfe, ſhee ſhall ſue forth her writ *de partitione faciend.*

The plaintiffe in his declaration muſt ſay, that the defendant and hee hold ſuch houſes or lands, &c. *inſimul & pro indiviſo.*

To this the defendant may pleade, that he is, and at the time of the purchaſe of the plaintiffes originall was ſeiſed ſole of the aforeſaid houſe and lands, *abſque hoc q̃d pred. quer' & def. inſimul & pro indiviſo tenent tenementa pred. prout &c. unde pet. judicium ſi partitio inter def. & quer' de tenemen. pred. fieri debeat &c.*

Et pred. quer. precludi non quia dic. q̃d def. & quer. tenent & die impetrationis &c. tenuerunt tenement. pred.

pred. cum pertin. inſimul & pro indiviſo pront. Et hoc pet. qd inquiratur &c.

If the plaintiffe recover in partition, a writ goes forth to the Sheriffe of the County where the land lies.

After the recitall of the aforeſaid writ, and the Sheriffes returne, Judgement is entred thus, *Ad quem diem hic ven' tam pred. quer' quam pred. def. per attorn' ſuos pred. Et vic. viz.* A. B. *Ar' modo mand' hic quandam partitionem de tenementis predict' cum pertin. inter partes predict. coram eodem vic. per ſacram. duodec. &c. fact' in hec verba, Sur. ſ.* A. B. *Ar. vic. com. pred. &c. (& ſic recite tot' returne. verbatim.) Ideo conſ. eſt qd partitio pred. in forma pred. fact' firma & ſtabilis imperpetuum teneatur, &c.*

If two, or three, or more, be joyntly ſeiſed of a Manor, to which is appendant an Advowſon, this Advowſon cannot be divided becauſe it is entire; but they ſhall preſent by turne, the eldeſt copercener ſhall preſent firſt, and the next in their order.

Upon a Judgement in partition, a writ of partition is awarded out to the Sheriffe, by vertue whereof he is to ſummon a Jury, and they and himſelfe in perſon, with the plaintiffe and defendant, who are before ſummoned to be there, go to the lands, and then by the oath of thoſe twelve men, having a reſpect to the true value, the Sheriffe divides and makes a juſt and equall partition into two parts, and one moity hee delivers to the plaintiffe, and the other moity to the defendant, & one muſt not have more then the other; and hereupon the Sheriffe

makes

makes metes and bounds; and now they are no more coperceners, but they hold ſeverally.

And if this partition bee equall, it is not to bee waived after, but it binds both parties and their heirs for ever.

And this writ with the returne thereof, is to be taken out into the Remembrance for the Prothonotary to ſigne Judgment thereupon.

Treſpaſſe.

TReſpaſſe is where one man doth damage to another, either by ſuffering his beaſts to come and feede in the others grounds, or by taking away his goods againſt his will, or the like.

A man may lay divers treſpaſſes in one Count, as breaking of his cloſe, cutting downe his trees, fiſhing in his piſcarie, and taking away his goods; and theſe in the Count the plaintiffe muſt lay ſpecially.

Hill. quarto Car. A. B. brings an action of treſpaſſe againſt *W. H. pedibus ambulando*, for comming over & treading his grounds, and layes in his Count the treſpaſſe to bee with a *continuando* from ſuch a time till ſuch a time: the defend. pleads the common Barre (his free hold) then the plaintiffe aſſignes a place *unde ex quo &c.* in barre whereof the defendant comes and preſcribes for a way, and ſhewes it in ſpeciall; the plaintiffe replies that the defendant did the treſpaſſe, *de injuria ſua propria*, and traverſeth the preſcription, *Abſque hoc quod predict. def. &*

omnes

omnes illi quorum ſtatum idem def. modo habet, habuerunt, & à tempore cujus contrarii memoria hominum non exiſtit, habere conſueverunt communem viam pedeſtrem, &c. prout predict. def. ſuperius allegavit, & hoc paratus eſt verificare, unde ex quo &c. ſibi adjudicari; the defendant, *ut prius dicitur, qd ipſe, & omnes illi quorum ſtatum idem def. modo habet, habuerunt, & à tempore cujus contrarii memoria hominum non exiſtit, habere conſueverunt pro ſe, firmariis, & ten' ſuis quandam communem viam pedeſtrem, &c.* to maintaines his preſcription for the way. *Et de hoc pon. ſe ſuper patriam, & pred quer' ſimilit. &c.*

Hill. vi. Car. rot. 1675. *Antony Brown* is plaintiffe in an action of treſpaſſe againſt *John Goldsborrough*, and it is *quare clauſum fregit, & herb' ſuam ad valenc' &c. ibidem nuper creſcen' cum quibuſd' averiis depaſt' fuit conculcavit & conſumpſit, necnon ſepes ſuas ibidem nuper erect' fregit & proſtravit, & al' &c.* The defendant pleades *franck-tenement*, and the plaintiffe aſſignes a place, to which the defendant pleads, and preſcribes to have common of paſture at certaine times of the yeere, *quando campus jacet et friſcus, &c.* the plaintiffe replies that the defendant did the treſpaſſe *de injuria ſua propria*, and traverſeth his preſcription of the common; the defendant maintaines his preſcription: *Et de hoc ponit ſe ſuper patriam, &c.*

Note, Where the plaintiffe joynes iſſue, you ſay, *Et hoc pet' qd inquiratur per patriam, &c.* and where the defendant joynes iſſue, you ſay. *Et de hoc pon. ſe ſuper patriam, &c.*

In

In an action of common treſpaſſe, if the defendant pleads the common barre the ſame Terme the declaration is delivered, and the plaintiffe puts in his new aſſignement, the defendant is to pleade to the new aſſignement the ſame Terme, and if hee pleads not guilty, at the triall the plaintiffe muſt prove the treſpaſſe.

An action of treſpaſſe lies for taking goods againſt my will out of my cuſtody, *de placito quare bona & catalla ipſius quer' ad valenc' x. l. apud B. nuper invent. cepit & aſportavit, &c.*

Note, If it bee dead goods you ſay, *cepit & aſportavit*; if living goods, *cepit & abduxit.* Alſo if it bee dead chattell, *ad valenc'*; if living, as an horſe, &c. *precii &c.*

An action of treſpaſſe lies for breaking a Park, and hunting the Deer there.

If one man ſhall intice anothers ſervant from him, an action of treſpaſſe lies.

Alſo if one man threaten another.

It lies by the Executors for taking away the goods of the Teſtator.

Treſpaſſe lies for entring and hunting the Conies in anothers warren, *de placito quare vi & armis liberam warrennam ipſius quer' apud W. intravit, & ſine licentia, & contra voluntatem ipſius quer' fugavit, & Cuniculos cepit & aſportavit &c.*

Note, If a man have free warren in another mans ground, it is either by grant or preſcription.

If a Lord of a Manor ought to have all the ſtraies that bee found within that Manor, if any ſhall take

away

away theſe ſtrayes, an action of treſpaſſe lies by the Lord of the Manor.

Treſpaſſe lies for chaſing or beating any mans cattell or beaſts.

If a man ſhall have a ſluce in his owne grounds, that the water may not overflow his land, if any ſhal ſpoile and deſtroy this ſluce, whereby his fields are overflowne and drowned, a ſpeciall action of treſpaſſe lies.

If a man ſhall fiſh within a piſcarie that belongs to a Lord of a Manor, which is his Royalty, an action of treſpaſſe lies, which Royalty the plaintiffe maintaines by preſcription.

If a man have *wrecum maris* by preſcription, or by grant from the King; if goods be *wrecum maris*, and another take them, an action of treſpaſſe lies.

If the goods of the Church be taken away, the Church-wardens ſhall have an action of treſpaſſe.

If you lay a *continuando* in your declaration upon the triall, you ſhall have the greater damages.

If a man have right and title to land which another hath in poſſeſſion, if hee put in his beaſts to feed in that cloſe, treſpaſſe will lie by him who hath right thereunto, and an action of treſpaſſe being brought, and not guilty pleaded to the new aſſignement upon a triall, the plaintiffe ſhall produce his evidence upon the title, and if the verdict goe for him, here is no poſſeſſion awarded, as it is in *ejectione firmæ*, but onely damages and coſts; and ſo hee ſhall bring treſpaſſe after treſpaſſe, and alwayes have

have damages, till hee in poſſeſſion diſclaime the lands in queſtion.

And the like action lies of an houſe when another hath the poſſeſſion thereof; and if the plaintiffe in the treſpaſſe get a verdict upon triall, hee had beſt to get the verdict exemplified, that ſo hee may ſhew it under ſeale the next triall, which will bee a good evidence in caſe they then diſclaime not the title, and keep ſtill poſſeſſion.

If a man bring an action of treſpaſſe *pedibus ambulando*, to plead a licence from the plaintiffe is good, if the plaintiffe reply, and confeſſe the licence; but if hee countermanded the licence, and ſince the countermand the treſpaſſe was committed, and upon the triall prove the countermand and treſpaſſe committed ſince, the licence is quaſhed, and the plea naught.

In actions of treſpaſſe, oncafe, or the like, there are two judgements, if it paſſe by *non ſum informat*, or *nichil dic*; the firſt the Prothonotary, in whoſe Office the cauſe is entred, ſignes *Judicium pro quer.* then there goes forth a writ to inquire what damages the plaintiffe hath ſuſtained by reaſon of that treſpaſſe; in which writ is a recitall of the whole declaration; then what damages the Jury finde, is returned by the Sheriffe in an inquiſition filed to the writ, then doth the Prothonotary ſigne coſts upon the writ, and ſets downe the damages and coſts the Jury gives, and in caſes the coſts himſelfe, and then enters it upon the

Then is the judgement compleate, and you may take

take forth what execution you pleaſe: the awarding of the writ of inquiry, and the entry of the judgement thereupon you ſhall ſee in Title *Covenant*, onely changing *occaſione non ſtruendi fraſtra*, for *occaſione tranſgreſſionis*.

You may take forth a common *clauſum fregit*, upon which the party is arreſted, and yet your declaration may be ſpeciall, and then you muſt file a new Originall to warrant your declaration.

You may try a title by an action of treſpaſſe; but then you ſhall not have poſſeſſion, but onely damages.

If you arreſt a man upon an action of debt, you are to declare in debt, and not in treſpaſſe or caſe, otherwiſe the Attorney may chuſe to take the declaration.

If a man bee arreſted upon a common *clauſ. fregit*, the plaintiffe may declare in treſpaſſe, or in caſe ſpeciall.

If a man be arreſted upon a common *clauſum fregit* in a vacation, though it be returnable the beginning of the terme following, if the plaintiffe declare in a ſpeciall action on the caſe, or in treſpaſſe, varying from the *clauſ. fregit*, the defendant may chuſe to plead the ſame Terme, but he may imparle if hee will.

A man brings an action of treſpaſſe *pedibus ambulando, & equitando*, the defendant pleades that hee tendred him amends, as 1. or 5. in ſatisfaction of the treſpaſſe, which was a ſufficient amends; the plaintiffe to this is to replie with a *proteſtando*

that hee did not offer money for amends *pro placito*, that the money hee saith hee offered was not sufficient; and issue taken hereupon, then all the proofe lies whether he offred this money, and whether this money was sufficient; and alwaies to these speciall pleas you must have a Serjeants hand.

Note, though a trespasse be done in divers closes, lying in one parish, yet the plaintiffe when hee declares, shall say, *quare clausum fregit* in the singular number; but if the trespasse be in two parishes, you must say, *quare clausa fregit* in the plurall number.

Also where the trespas is laide to be committed, there the *venire* shall arise, and thence the Jury shall come to trie it, unless it be in some speciall cases; as where an action is laid in London upon a bond, conditions performed pleaded in Somerset at Taunton; then the *venire* shall arise at Taunton in Somerset, and there it shall be tried.

So if an action on the case bee brought against a Carrier for losing goods, the plaintiffe counts the defendant is a Carrier, and that he did undertake to deliver the goods at Wells in Somerset at the signe of the George there, in consideration the plaintiffe would give him one penny in the pound; and the plaintiffe layes his action in London: if now the defendant pleade the generall issue *non assumpsit*, it is triable in London, where the action is laide; but if hee pleade specially that hee did deliver them at the George, *secundum promissionem & assumptionem, &c.* the *venire* shall arise in Wells in Somerset, where it shall bee tried, as in this case was said before.

If

If an action of trespasse be brought against a man, who pleades no issue, and the plaintiffe hath a verdict, and before Judgement the defendant dies, now this failes for ever, and the defendants executors are not liable, otherwise in case Judgement were had. *Actio personalis moritur cum persona.*

An action of trespasse lies by the Administrators for the goods of the Intestate.

Trespasse lies for comming into another mans house against his will.

Yet a man may go into a Tavern or an Ale-house, and call for wine or beare, and no trespasse lies so long as hee payes for what hee calls.

Trespasse lies for my house or barne &c.

If an action of trespasse bee brought against one for goods, as an oxe or horse, if the defendant can justifie it as a stray, it is a good plea and then hee must shew that hee is seised of a Manor in fee, within which Manor, time out of minde strayes did belong, and so this horse comming as a stray within the Manor, and the making proclamation as the statute is, no body claiming, hee kept it, *prout ei bene licuit.*

A man may lawfully come into another mans house to demand or pay money, and if trespasse bee brought the defendant may plead specially it was for money. A declaration in trespasse being delivered, and the defendant pleades couinon barre to make him assigne a place, to which the defendant replies and assignes a place, the defendant ought to pleade to the new assignment the same matter of course.

Trespasse

Trespasse and Batterie.

IF one man shall assault another, strike him, or do him any violence, an action of Trespas and Battery lies.

The Writ runs thus, *ad respondend' H. B. de placito quare vi & armis in ipsum H. apud L. insultum fec. Et ipsum verberavit vulneravit & male tractavit ita quod de vita ejus desperabatur. Et alia enormia ei intulit &c.* Son assault demesne in defence of his person is a good plea to an action of Batterie.

Note, I may beate a man in defence of my goods, and I may wound him in defence of my person.

So if a man offer to do mee any damage, as comming into my house against my will, or breaking any of my gates, or offer to beate my wife or any other wrong, I may lawfully thrust him away to hinder him; and if hee bring an action of Assault and Batterie, I may pleade specially, and shew this at large, that hee would have done mee this wrong by taking my goods or spoiling them, or beating my wife, or the like; and so I, to hinder him, *molliter imposui manus*, and alwayes to such speciall pleas you are to have a Sergeants hand: In the like case may a servant justifie in defence of his Master.

If two men bee fighting, I may goe to one of them, and hold him perforce from striking; and if hee bring an action of Assault and Battery against mee, I may plead specially, and shew that hee was fighting with another, whom hee indevoured to

have

have killed, and I, in his defence, and for preservation of the Kings peace, came to his aide, *& molliter imposui manus*: to this the plaintiffe may reply, *quod def. de injuria sua propria, absque tali causa*, then the defendant maintaines his plea, *ut prius &c. Et de hoc pon' se super patriam, &c.*

If the defendant pleade a generall issue to an action of Battery, it lies on the plaintiffes part to proove the Battery.

Note, In actions of this nature, and trespasse, and case, &c. when the first judgement is obtained by default, and a writ of inquisie awarded, that being executed and returned, the plaintiffes Attorney taking it from the Sheriffe is to enter this writ it selfe, and the inquisition returned *verbatim* in the Remembrance, in the Prothonotaries Office where the cause depends, which being done, the Prothonotary signes upon the Remembrance his rule, and then the plaintiffes Attorney takes out whatexecution he thinks best, filing the writ of inquiries at the *Casus brevium*.

Also all *Elegits* and *scire facias* are taken out into the Remembrance, with the returnes thereof, and a rule given in the margent upon the *scire facias* for the defendant to plead, or *fiat execution per default*.

Also upon every Imparlance, a rule is given in the Remembrance for the defendant to plead within nine or ten dayes after the beginning of the Terme following, or *interetur judicium*.

When a writ is awarded to the Sheriffe, which writ is to be executed within a Liberty, the Sheriffe himselfe

himſelfe, or his Bailiffes cannot execute it, for then hee is liable to an action on the caſe, to be brought by the Bailiffe thereof: If the Bailiffe doe execute the writ, he is to returne what hee hath done to the Sheriffe, and the Sheriffe is to returne the ſame returne the Bailiffe made to him, and the Sheriffe is to put his hand to the writ, and not the Bailiffe.

When a writ of ſeiſin in Dower is executed and returned, the plaintiffes Atturney is to take it out into the Remembrance *verbatim*, whereupon the Prothonotary ſignes on the margent coſts: And remember, when you take out writs of inquiry, and the like writs into the Remembrance for coſts to bee ſigned thereupon, you looke out the number roll of the judgement, and put it in the margent of the Remembrance when you take out your writ.

All theſe writs of Inquiry are taken out into the common Remembrance

You muſt remember to take out, when you reverſe an outlawry, the *precipe* thereof into the Remembrance.

Alſo when you put in ſpeciall baile at an Attorneyes ſuite, you are to take the Remembrance to the Judge before whom you go, and entring the baile to the attachment, the Judge will put his hand thereto; but this is the recovery Remembrance where all the attachments are entred.

Then doth the Prothonotary write in the ſame place *comparuit def. recordatur per curiam*, then doth the defendants Attorney enter his appearance there.

Trespasse sur le case.

Trespasse sur le case lies divers wayes:

As, When I covenant with another by word of mouth to doe such a thing, as to bring five quarters of wheate to his house, the price betwixt us being agreed upon, the rest to be paid upon delivery, and also in consideration of xii. d. given in earnest; now if I doe not bring these five quarters of wheate to his house according to my agreement, an action on the case lies.

The plaintiffe must shew in his Count the direct agreement, with the consideration at large.

An action on the case lies for money borrowed; and then the defendant cannot wage his law: or he may bring an action of debt, and then the defendant may wage his law: the like for weres bought.

An action on the case lies not but upon consideration; and therefore you must averre a consideration to make good your action.

As for example, Another man agrees with me, that in consideration I give him in hand x. l. he will sell and deliver mee such an horse within foure weeks after; if hee at the day deliver mee not the horse, an action on the case lies. And here I must set forth, that the defendant, in consideration of x. l. by mee paid him in hand, did assume to sell and deliver mee his horse at such a day, and then I must in *facto* averre, that although I paid him x. l. in hand, hee notwithstanding delivered not the horse at the day

according to his promiſe, and ſo conclude: So that alwaies in caſe, the plaintiffes conſideration is the ground of the defendants aſſumption.

So, If I am about to ſue a man for x. l. which hee owes mee, and another man deſires me to forbeare, and hee will pay mee by ſuch a time; if hee pay mee not at ſuch a time, an action on the caſe lies: And in my declaration I muſt firſt ſhew that ſuch a man owed mee ten pounds, and the money being due I intended to put him in ſuit, but the other deſired mee to forbeare till ſuch a time, and hee would pay it (then) I muſt *in facto* averre that at his requeſt I did forbeare; *predictus tamen defend. promiſsionem, &c.*

If there bee a conſideration without a promiſe, as thus, If a man will of his owne accord ſollicite or take paines for another, or beſtow any coſt upon him, if the other will not pay him, I doubt whether this is actionable: for in caſe the plaintiffe muſt ever averre a requeſt, as it is alwayes *ad ſpecialem inſtanc' & requiſitionem, &c.* or a promiſe on the defendants part, *ſuper ſe aſſumpſit*, which requeſt or aſſumption the plaintiffe muſt prove; or if the conſideration precede the promiſe; as if a man will of his owne accord take paines for another, and after he is promiſed ſo much money for his paines; *quere* if this be actionable.

If a man promiſe another 100. l. with his daughter if he will marry her; if he do marry her, an action on the caſe lies for the 100. l. and the plaintiffe muſt in his Count ſhow that the defendant, in conſidera-

tion

tion that the plaintiffe at his requeſt would marry his daughter, aſſumed to give him 100. l. then the plaintiffe muſt ſay *in facto*, that hee married her ſuch a time, *predictus tamen def. &c.*

So, If a man be ſurety for another, and hee promiſe in conſideration thereof to ſave him harmeleſſe, if hee ſhall afterwards bee troubled or arreſted for this money, an action on the caſe lies againſt him that promiſed to ſave him harmeleſſe.

There are infinite actions of this nature, which by this ſhort taſte you may ſomething underſtand.

An action on the caſe lies for ſcandalous words, as to call an Atturney an *Ambodexter*; theſe words will beare action, if they be well laid.

So, to call a Merchant a Banckrupt, or to ſay hee is a broken Merchant, are words that will beare action.

So, to call a man a thiefe, for he ſtole ſuch a thing, are words actionable.

To call a wife a whore will not lie at the common Law, but at the civill Law: To call a wife in London a whore, will beare action by the cuſtome of London, in Guild-hall there: but to call a maide a whore, will beare action at the common Law, becauſe it hinders her preferment in marriage.

So, to ſay to a maid that ſhe had a baſtard.

So, to call a man a common drunkard will beare action; but to call him onely drunkard is not actionable.

The perſons againſt whom the words are ſpoken,

doe much aggravate, as to cast out scandalous speeches against a man in authority, as to say to a Justice of Peace that hee is a murtherer, for hee kill'd such a man; this is an offence of an high nature, and will exceedingly increase damages.

So, to call a common person a Papist is not actionable: but to say that a Bishop is a Papist, are words that will beare action, because Bishops are the chiefe pillars of Religion, and they that teach to others, ought to maintaine the same Religion.

When a man brings an action on the case for words, and the defendant pleads not guilty, it lies upon the plaintiffes part to prove the words spoken, as hee hath laid them.

If a man shall abuse a Nobleman by words, it comes within the Statute *de scandalis magnatum*, upon which Statute you must declare.

If a man speake scandalous words against a common person, and he bring his action; if these words be true, and the defendant can prove them, he may plead justification; or if hee spake other words, hee must shew what words, *absque hoc*, that he spake the words in the declaration.

If the defendant plead the generall issue *non culpabilis*, it lies on the plaintiffes part to prove the words as he hath laid them.

Among many scandalous words, a man may pick out such words as hee is sure will beare action, and declare upon them.

In cases of this nature, hee that drawes the declaration must bee very carefull in the draught, and bee

bee well advised if the words will beare action.

The defendant may bee arrested upon a *clausum fregit*, and yet the plaintiffe may declare in speciall case; but then the defendant shall imparle of course.

But if the defendant bee arrested in the vacation upon a writ wherein is mentioned the action at large returneable, the first returne of the Terme following, the defendant shall pleade that same Terme, or the plaintiffe may enter up judgement of course.

When a man sels an horse for ten pounds, which money is to bee paid upon a day after, when the day is past, and hee brings his action on the case for the money, the plaintiffe must averre *in facto*, hee delivered the horse to the defendant: and so upon triall hee must prove a delivery.

If a man lend another his horse, who undertakes to restore him in as good plight as hee had him; if hee shall now ride him lame the horse, or abuse him, an action on the case lies.

So, if a man sell an horse, warranting him to bee sound, if the horse be diseased and unsound, an action lies.

So it is if a man shall warrant sheepe upon sale to be sound, and they are unsound: To this the defendant may pleade, *quod non warrantizavit modo & forma &c. Et de hoc ponit, &c.*

So, if a Smith shall shooe my horse whereby hee growes lame by reason of some naile not well knock'd in, an action lies; because every man is bound

bound to doe his profeſſion *bene & ſufficienter.*

So caſe lies againſt a Taylor for ſpoyling a garment.

An action on the caſe lies by the Maſter againſt the ſervant for going from him before his time is out.

So it lies againſt one that ſhall intice his ſervant away.

Caſe lies where there is a mutuall contract betwixt two by word of mouth, and to binde the bargain a piece of money is given by one to the other as earneſt; now, if either will not performe what they have agreed upon, the other may bring his action on the caſe.

If two ſhall agree to doe ſuch or ſuch a thing by writing under ſeale; now caſe lies not for non-performance, but an action of covenant.

Where one man agrees with another in conſideration of xii.d. given in earneſt to let him an horſe; now if hee doe not, the other may bring his action on the caſe.

But in ſome caſes an action lies where no earneſt is given: as, where I deliver goods to a Carrier, aſſuming to pay him upon the delivery thereof at ſuch a place in the Country ſo much for every pound; if now the Carrier ſhall loſe theſe goods, or otherwiſe not deliver them, caſe lies; becauſe a Carrier is bound by his profeſſion to deliver what he receives and undertakes.

So it lies when a man ſhall retaine one by giving him a penny of ſilver in earneſt to ſerve him; if hee receive

receive his earneſt, and after will not ſerve him, an action lies.

So it lies by the ſervant, if the Maſter ſhall put him out of his ſervice without juſt cauſe, before the time agreed upon.

An action on the caſe lies againſt a Fuller for ſpoyling of cloth being brought him to dreſſe; and this action is given by the Statute *de anno quarto* Henrici *quarti*, which Statute you muſt in briefe recite.

If the conſideration precede the promiſe and requeſt, as thus, A man of his owne accord takes paines for another, and layes out money for him; then the other ſayes to him, In conſideration you have done this and this for mee, I will give you ſo much money at ſuch a day: now if hee give it not at the day, I doubt whether this action will hold; for the plaintiffe in all actions on the caſe muſt prove a requeſt or promiſe to warrant and precede the conſideration.

If the defendant to an action on the caſe pleade *non aſſumpſit*, hee confeſſeth the conſideration, and the plaintiffe needs to prove but the defendants promiſe or aſſumption.

Caſe lies againſt the Sheriffe, if he ſhall let a man goe being arreſted at my ſuit upon a mean Proceſſe, or upon a *cap' utlag'*.

If hee let him goe upon an execution at my ſuit, I may bring my action of debt, againſt the Sheriffe upon that Iudgement.

If the Warden of the Fleete ſhall let a priſoner eſcape,

escape, an action lies against him, and not against the Sheriffe.

An action on the case lies against one that shall sell the beasts of another, warranting them to bee his owne.

An action lies by the Parishioner against the Parson if hee carry not away his tythes in convenient time, being set out for him, for thereby the Parishioner dare not put in his beasts into the field.

An action on the case lies by the servant that is hired from yeer to yeer for his wages.

If a man owe mee x. l. who hath owing him by another x. l. and hee promiseth me if I will release him that x. l. that other which owes him x. l. shall pay it mee: Now if I release him this x. l. and the other do not pay me, I may bring my action against my debtor and shew this speciall matter.

If a man deliver goods to a Carrier, and hee accepts and undertakes to deliver them according to the direction, if they be lost, he is liable to an action on the case, though hee had no money in hand; nor is it a good plea for him to say hee was robbed, though hee proves it.

An action on the case lies against an Executor upon the promise of the Testator, if there bee a consideration.

Where two agree by word of mouth to stand to the award of such a man, who maketh an award, and one will not performe it, the other may bring his action on the case for non-performance.

If a man have an Office granted to him, and ano-

ther

other shall receive the profits thereof, or otherwise disturbe him in the execution of his place, hee may bring a speciall action on the case.

If a man have a water-course through his ground for watring his beasts, and other necessaries, and another shall stop up this with stones and turfs, and divert the course thereof, an action on the case lies: where note, the plaintiffe must prescribe for a water-course.

Or it lies for stopping up a way; and for a way the plaintiffe must alwayes prescribe.

An action on the case lies for hindring the Commoner in the use of the Common.

An action on the case lies for payment of money upon a bill of Exchange.

If a man bee lodged in a common Inne, and certaine of his goods bee stollen, an action on the case lies against the Inn-keeper: But if a man be lodged at a friends house, and his goods stollen, no action lies against the Master of the house.

If a man lodge at a common Inne, and any of his goods be stollen out of the chamber where hee lodges, though hee keep the key, the Inn-keeper is liable to an action on the case, and shall answer the value.

And so it is if his horse bee stollen out of the stable; but if his horse bee put to grasse by his appointment, and is lost, the Inn-keeper shall not answer it, unlesse hee did warrant the horse.

If the Ostler will of his owne accord put him to grasse,

graſſe, and hee be ſtollen, the Inn-keeper is ſubject to an action.

If an action on the caſe bee brought againſt an infant, he may pleade that *tempore promiſſionis* hee was within age, and it ſhall be a good barre.

An action lies againſt any that ſhall burne any houſe, or part of an houſe of anothers through want of care and diligence; but if hee burne it wilfully, it is felony by the law.

If a man lie ſicke of a wound or any hurt, and a Chirurgeon undertake to cure him and make him whole for a certaine ſumme of money agreed upon betwixt them; if hee be not cured, hee may bring his action on the caſe.

An action lies againſt the Sheriffe for taking greater fees then is allowed by the Statute *de anno viceſimo octavo Eliz. &c.*

Caſe lies for ſtopping the light of ones houſe; as by building too neare the window, or the like.

So, An action of nuſance, ſimilare of an action on the caſe, lies where a man builds a ſtable or privie houſe ſo neare his neighbours houſe, that the ſmell thereof annoyes him.

Actions are infinite, and not to be named in particular, but are drawne as they fall out betweene man and man.

As I ſaid before, you may inveſt a man upon a common *clauſum fregit*, and count in ſpeciall caſe; but then the defendant ſhall have Terme imparle of courſe: and if hee plead not in due time, you are to marke the declaration to the Prothonotary in whoſe

whose Office the cause is entred, and hee will signe on the margent of the paper-booke *Judicium pro quer'*; then is a writ to inquire of damages awarded, as it is in Title Covenant; onely for *occasione conventionis fracta*, put in *occasione promiss.* The writ of inquirie being executed and returned with an Inquisition, judgement is entred up for the plaintiffe, as followes.

Ad quem diem his vic. prod. quer' per Attorn' suum predictum, & vic. videl't, *A. B. Militis modo mand' hic quandam inquisitionem coram se apud B. in Com' predict', decimo die Julii ult' preterit, per sac. suos. duodecim, &c. capt. per quam compert' existit, quod predict. quer' sustinuit dampna occasione non performation' promiss. & assumps. ultra miss. &c. ad x.l. & pro miss. &c. ad xl. d. Ideo ven. fec. est quod pred' quer' recuperet versus predict' def' dampna sua ad x.l. & xll. d. per inquisitionem pred' in forma pred' compert. necnon v.l. eidem quer' ad requisitionem suam pro miss. & custag' suis pred. per Curiam hic de incremento adjudicat. que quidem dampna in toto se extendunt ad xv.l. & xll. d. Et pred' def'. capiantur, &c.*

You shall know, that all originall writs, as common originals, *precordari, Justic' &c.* issue out of the Chancery, with a *teste meipso &c.* and there bee Curitors for that purpose, to whom for making of them you must repaire; and all writs judiciall, out of the Common Pleas, with a *teste* [illegible] Bapiae; as all manner of Executions, as *cap' ad satisfac', fac', Elegit, breve de inquir' de dampnis, scire fac'*, and *return' habend'*, and many more, doe issue

out of the Prothonotaries Office, &c.

When you have drawne any ſpeciall action, you ſhall doe well to let the Prothonotary in whoſe Office you enter, peruſe it, that if any thing bee amiſſe it may bee amended: and take this for a generall rule, in your declaration, put in nothing that is untrue or impertinent; and herein you muſt bee warie, becauſe though you have verdict, yet the beginning of the Terme following, if it bee tryed in the Countrey, they on the other ſide may move in arreſt of judgement, and they will take exception of the leaſt flaw, eſpecially if any materiall thing be omitted, and judgement will bee ſtayed thereupon.

If the wife ſpeake ſcandalous words of a man, both ſhee and her husband ſhall bee arreſted, and hee muſt put in baile, and the declaration is againſt both; but the words are laid to be ſpoken by the wife onely.

Note, In all actions on the caſe, where the damages given by the Jury amount to above five markes, the plaintiffe payes damages clere; that is, hee payes 2.s. in the pound to the Prothonotary, who ſignes judgement thereupon; as, if 100.l. damages bee given, the Prothonotaries fee is 10.l. *& ſic proportionabiliter in infinitum.*

A ſpeciall originall on the caſe being put to making to the Cuſtor, if you lay damages above 40.l. you pay 6.s. 8.d. fine to the Cuſtor for the King; If 100.l. damages, 10.s. fine, *& ſic proportionabiliter in infinitum.*

Trover.

Trover.

ACtion of *Trover* lies where another man comes by goods by finding or otherwiſe, if hee will not deliver them to the owner upon demand, he may bring his action of trover; and ſo ſhall recover as much damages as the goods bee worth.

You ſhall not recover the thing detained, as in an action of detinue, but damages to the value.

And note, that the plaintiffe, before hee bring his action, muſt firſt make his demand.

And if the defendant to an action of trover plead *non culpabilis*, the plaintiffe muſt prove a property in the goods.

And there be more actions of this nature brought now, then actions of detinue, becauſe the defendant to this action cannot wage his law, whereas he may to an action of detinue.

If a man bring an action of trover for an horſe, a cow, or the like; the defendant may juſtifie it as a ſtray, and may chuſe to deliver it unleſſe he be paid by the owner for his meat and keeping, which hee muſt pleade ſpecially.

In this action you may arreſt the party upon a common *clauſum fregit*, and declare in trover: Or you may ſue him to an outlawry, and if the ſeverall proceſſes bee laid ſpecially, the defendant is to appeare, and anſwer the ſame Terme the exigent is returneable, otherwiſe not.

If you cannot arreſt a man at a certain time, you may

may sue him to an outlawry upon any personall action, as debt, detinue, case, trespasse, trover, or the like.

If I finde my goods in another mans custody, I may bring an action of trover against him; now if he bought them in open Market, or at any Fair, and they be tolled in the book as the manner is, this alters the property, and the goods I can never recover; and this the defendant must pleade specially: But if hee bought them privately, any where but in open Market, or a Faire, by this the property is not altered, and I may recover them by action of trover.

So, If my plate bee stollen, and I finde it in another mans custody, if hee bought it privately, and not in a Gold-smiths Shop; or if hee bought it at a Woollen-drapers Shop, or any other but a Gold-smiths Shop, the property is not altered, and I may recover the value of my goods by action of trover, in damages.

Theft

These are the fees due and belonging to the three Prothonotaries of the Court of Common-Pleas at Westminster for entries of Declarations, Pleas, and Judgements; and also for making and entring of Writs in their severall Offices, and for other dues belonging to them, confirmed and allowed by our Soveraigne Lord King CHARLES, *by his Letters Patents under the great Seale of England, dated at Canbury the two and twentieth day of July, in the twelfth yeere of his reigne.*

	s.	d.
In primis, For the entry of every common Declaration, common Plea in barre wherein no freehold is pleaded, common Replication, and common Rejoinder in actions personall,	1	0
For the entry of every speciall Declaration, speciall Plea in barre, or Abatement, Free-hold, Replication, or Rejoynder, and Pleas subsequent in actions personall, not exceeding three sheets, every sheet containing twelve lines at the least, and every line containing ten words,	2	0

And

	£	s	d
And for every ſheete ſo exceeding,		0	8
For every Declaration in actions upon the Caſe, *Ejectione firme*, Accompt, Annuity, Conſpiracy, Covenant, Deceit, Partition, *Plegiis acquiet'*, and debt upon any Statute, Plaint in Aſſize, and the like ſpeciall actions, and in all reall, mixt, and popular actions, if the Declaration or Plaint exceed not three ſheets,	2	0	
And for every ſheet ſo exceeding,		0	8
For the entry of every Barre, Replication, Rejoynder, and Pleas ſubſequent in eve- of the actions laſt above recited; and in the like actions not exceeding three ſheets,	2	0	
And for every ſheet ſo exceeding,		0	8
For the Oyer of every Bill, Obligation, Indenture, Record, Return, or Certificate, or the like, entred *in hac verba*, not exceeding the length of three ſheets,	2	0	
And for every ſheet above that length,		0	8
For recording of every appearance by the Court,	2	4	
For the entry of every Recognizance without Condition, Challenge to the Sheriffe, or Coroners, or to the Array, or other ſpeciall Averments,	2	0	
And for the entring of every Recognizance with a condition,	4	0	
For every Judgement in debt, treſpaſſe, or detinue, without a *tales*, for the Prothonotarie,	2	0	

And

	£	s	d
And for entry of every Adjournament,	0	0	4
For every Judgement with a *tales* besides the fee above-recited,	2	0	
For every *Remanet* and Judgement for costs given to the defendant by the Statute, besides the fee above-said,	2	0	
For every Judgement in all other actions, aswell personall, as mixt and reall, and prohibitions, and the like,	4	0	
For every satisfaction, *recordatur*, discontinuance, *retraxit*, relinquishment, *nolle prosequi*, or the like, in actions personall,	2	0	
And in reall actions,		4	0
For the entry of a single recovery, and the writ of seisine thereupon,	10		6
And for every Voucher more,		4	0
For the entry of every *mittimus* and *dedimus potestatem* for a common recovery,	6	0	
For the entry of a *Summ' ad Warr'* for a common recovery, and the writ of *Summon' ad warr'*,	4	6	
For the entry of a *certiorare* to certifie a warrant of Attorney for the Tenant or Vouchee,	4	0	
And if for both,		6	0
For every forraigne Voucher sent to the common Pleas to summon the Vouchee, if the Record be not above three sheets,	2	0	
And for every sheet more,		0	8

The like fees are to bee paid when the

	£	s.	d.
Record is remitted backe againe after the Voucher determined,		2	8
For the entry of every ſpeciall verdict whereupon a *Cur adviſare vult* is entred, being not above the length of three ſheets written as aforeſaid,		2	0
And for every ſheet exceeding that length,		0	8
For the entry of every generall verdict with a *Cur adviſare vult* without a *Tales*,		2	0
And with a *Tales*,		4	0
For the entry of every *remittitur* of debt or damages,		1	0
For the entry of every Information upon any penall law, and ſigning the *ſub-pœna* onely,		2	8
For the entring of every ſurmiſe for a prohibition to bee granted, not exceeding the length of three ſheets, written as above-ſaid,		2	0
And for every ſheet above that,		0	8
For entring of every *audita querela* not exceeding three ſheets, written as above-ſaid,		2	0
And for every ſheet more,		0	8
For the entry of the Oath of every witneſſe to prove the ſurmiſe in a Prohibition, or *audita querela* brought by an infant, and the entry of the proofes *de morte & vita viri*, in dower, and the like actions in ſuits,		2	0
For the releaſing of any default in any reall action,		2	0
And entring the recitall of the *Grande Cape*,		2	0

For

	£	s.	d.
For damages cleare in every action where damage is given, if the damages given amount to five markes or above, 2. s. in the pound,		2	
And if under five markes,		0	0
For examining every Record of *miſpriſm*,		1	0
For making of the Record for tryall of an iſſue in any of the Counties Palatine for the firſt three ſheets,		2	0
And for every ſheet after,		0	4
For the exemplification of any Record not exceeding ſix ſheets,		5	0
And for every ſheet exceeding that rate,		0	8
For the entring of ſeiſine in dower, and dying ſeized, if the returne of the ſeiſine exceed not three ſheets,		4	0
And for every ſheet exceeding,		0	8
For entring of writs of exemption, *de non ponend' in Jurat'*, and Patents *de libertatibus alocand'*, and Protections, Cognizance of Pleas, and the like, according to the rates aboveſaid, if they exceed not three ſheets,		2	0
And for every ſheet exceeding,		0	8
For the entring the default upon the diſtreſſe in waſte, *quare impedit*, and the like, and judgment thereupon, if the title or count doe not exceed three ſheets,		6	4
And if it bee more then as aforeſaid, for every ſheet,		0	8
For the entry of a *quo warranto*, if it exceed not three ſheets,		2	0

	li.	s.
And if it exceed more, for every ſheet,	0	8
For the entry of every Plea, thereupon according to the ſame rate,	2	8
For the entry of every Plea in accompt pleaded before Auditors, if it bee not above three ſheets, written as above ſaid,	2	0
And if more, for every ſheet exceeding,	0	8
For the entry of every *Summon'* and Severance, and *Aide prier*,	2	0
For the admiſſion of an infant to his *Prochein Amye*, or Gardian.	2	0
And if it bee by Commiſſion,	4	0
For entring of the defendants diſcharge upon a *capias pro fine*, or of a contempt,	2	6
For the like upon a Reſcous returned and admitted to his fine,	4	0
For traverſing of a Reſcous, and iſſue thereupon,	6	0
For the entring of the allowance of every generall and ſpeciall pardon of Outlawry before Judgement and after,	5	4
For entring of a *dies dat'* in debt, detinue, and treſpaſſe,	1	0
And in all other actions,	2	0
For the entring of the receit of a *Feme covert*, Tenant in taile, Leſſee for yeeres, or the like,	2	0
And for the entry of the Plea, if it exceed not three ſheets,	2	0
And for every ſheet exceeding,	0	8

	£	s	d
And if the receipt be by writ, then more for entring of the writ,		2	0
For the entring of an Affize delivered into the common Pleas by the Juſtices of Aſſize to be inrolled for every ſheet,		1	0
And if the Affize come into the common Pleas by *Certiorare*, then more for entring the *Certiorare*,		2	0
For entring of every Abridgement of the demand in dower, Affize, or the like,		2	0
For the entry of every *pone* to remove a plea by writ out of the County Court there holden by Juſtices, and for the returne of the *pone*,		4	0
For the entring of any Record ſent into the common pleas, by *mittimus* or otherwiſe. And likewiſe for the entry of every *Rege inconſulto*, or ſuch like, if it exceed not three ſheets,		1	0
And for every ſheet exceeding,		0	8
For the entring of every certificate of baſtardy certified by the Biſhop, and the awarding of the Writ, and Judgment thereupon,		6	0
For the entry of the Licence of the Court to purchaſe a new writ by journeyes of Accompt,		2	0
For the entry of every originall writ delivered of record in reall and mixt actions,		2	0
For the entry of every ſheet above three ſheets of every challenge to the Sheriffe, or Coroners, or to the Array, or other ſpeciall		0	8

Averments,

	£	s.	d.
Averments, or the like,	0	0	8
For the entry of every *remanet* in reall actions,	0	4	0
For the entry of every *Remittitur* in reall and mixt actions,	0	2	0
For the entry of every sheet above three sheets of every *Aide prier*,	0	0	8
For the entry of an admission of a Guardian, if it be by Commission and *mittimus*,	0	6	0
For the entry of a privie Seale, for every sheete,	0	0	8
For the entry of the Licence of the Court to compound upon penall Statutes,	0	2	0
For the entry of every Warrant of Attorney, made by the Tenant in common recoveries, or the like, after their appearance at the Barre,	0	2	0
For every judgment by speciall confession of the title in *Quare impedit*, or the like, if it exceed not three sheets,	0	4	0
And for every sheet after,	0	0	8
For the entring of every speciall imparlance,	0	2	0
For the entring of every *committitur* of the prisoner to the Fleete by the Roll, being brought to the Barre by writ, and every tender of the body in discharge of the baile,	0	4	0
But if it bee without writ, then in either case but	0	2	0
For the entring of every demand for a prisoner			

	£	s	
ſoner to appeare, and remanding the ſaid priſoner,		4	0
For the entry of every eſſoyne in the Plea rolls, as upon wagers of law,		1	0
For entry of the Baile upon every reverſall for inſufficiency of the Exigent, or of the Returne,		2	4
For the entry of every declaration in debt, upon a demiſe or the like ſpecial declaration, if the declaration exceed not three ſheets,		2	0
And if ſuch declaration exceed the number of three ſheets, then for the entry of every ſuch ſheet containing twelve lines, and every line then words,		0	8
For the entry of every ſeverall Count upon one originall in debt, detinue, treſpaſſe, and the like,		1	0
And for the entry of every ſeverall Count in actions upon the caſe and accompt; and the like upon ſeverall dayes, if the Count exceed not three ſheets,		2	0
And for every ſheet ſo exceeding,		0	8
But if the condition bee in debt, for payment of money at one day, or under the length of two ſheets, then for the entry thereof but,		1	0
For the entry of every *mittimus* or *certiorare*, and the returne thereof,		4	0
But if the returne thereof exceed three ſheetes, then for every ſheete ſo exceeding,		0	8

For

	£	s	d
For the entry of the Count in a Prohibition, and pleading thereupon after appearance of the Defend. not exceeding the length of three sheets,		2	0
And for every sheet above that length,		0	8
For the entry of every writ of attaint or false judgement,		2	0
For the entry of the returne thereof, and the assignement of errours, or false oath, not exceeding three sheets,		2	0
And for every sheet more,		0	8
For the entry of every sheet above three sheets of the oath of every witnesse examined to prove the surmise in a Prohibition, or *Audita querela* brought by an infant, and the entry of the proofes *de morte & vita viri* in dower, and the like actions and suits,		0	8

Fees due to the Prothonotaries for writs, and the entries of them, amongst other their dues.

	£	s	d
For every writ of Prohibition or Consultation not exceeding foure sheets,		2	0
For every sheet so exceeding,		0	4
For every *Withernam*, *Return' habend'* afther Appearance, second deliverance, writ of Priviledge, *habeas corpus*, *Procedendo*, *Certiorare*, *Summons*, *Resummons*, *Peti cape*, *ven' fa'*, *sci' fa'*, *Elegit*, *Extent*, *Supersedeas*, *Subpœna*, Writ to the Bishop, *Attachment*, *Distringas*			

	£	s.	d.
ſtringas Jur', habeas corpora, and *diſtringas in Aſſiſ. & Attaint*, and the like, *habere fac' poſſeſſionem*, Writs of view, *Nihil habuit, I. demptit' nonnihil*, and every other ſpeciall writ,		2	0
For the entring of every ſuch writ which requireth an entring, not exceeding foure ſheets,		2	0
And if more, for every ſheet exceeding as aboveſaid,		0	8
For every *Ca' ſa', & Fi' fa'*.		0	6
For every *Teſtat. fur. Ca. ſa. & Fi. fa. diſtringas ad deliberand'*, and writs to enquire of damages in treſpaſſe and replevin,		1	0
For writs to enquire of damages in Covenant, Ejectment, Actions upon the caſe, and the like,		2	0
For every *Capias pro fine*,		0	6
For the *Exigent* upon a *Capias pro fine*,		0	10
For the entry of the returne of every writ in the Prothonotaries roll, other then the *ca. ſa.* returned *non eſt inventus*, and the *fi. fa.* returned *nulla habet bona*, whereupon any further proceſſe is awarded, not exceeding foure ſheets,		2	0
And if more, then for every ſheet		0	8
For the entring of every writ of priviledge or *habeas corpus* with the bail for one cauſe,		6	0
And for every cauſe more,		2	0
For the entry of every *Continuance* upon an *habeas corpus* and cauſe & cauſa,		2	0

	£	s	d
And for every other cauſe,		2	0
For every reverſall upon an outlawry, for default of Proclamation with one name, and the baile, or *nolle proſequi*,		4	4
And for every name more,		2	0
For every reverſall for the inſufficiency of the writ of Proclamation, or return for one name, with Baile, or *nolle proſequi*,		6	4
And for every name more,		2	0
For every reverſall for an inſufficient Exigent, or returne for one name,		8	4
For every name more,		2	0
For every *ca. ſa.* and *fi. fa.* after a *devaſtavit*,		2	0
Whereof by allowance from the Protho notary, the Clerke hath had		0	8
For every ſheet exceeding foure ſheets of writs, of and for to enquire of damages in Covenant, Ejectment, actions upon the caſe, and the like actions,		0	4
For every writ of *Liberate*, or the like ſpeciall writ,		2	0
Whereof by allowance from the Protho notary, the Clerke hath had		0	8
For every *Diſtringas nuper Vic.* and *non Omittas*,		2	0
Whereof, by allowance from the Protho notary, the Clerke hath had		0	8
For the entry of every ſuch writ, and the entry of every other ſpeciall writ which requireth			

requireth an entry, not exceeding foure sheets, — 2 0

And for every sheet so exceeding, — 8

For every *Distringas* in detinue, — 2 0

Whereof the Clerk, by allowance of the Prothonotary, hath had — 0 4

For writs to enquire of damages in Covenant, Ejectment, actions upon the case, and the like actions, if they exceed not 4. sheets, — 2 0

Whereof, by allowance from the Prothonotary, the Clerk hath had — 0 8

For the entry of every *Commission* upon an *habeas corpus cum die & causa*, with one cause returned, besides the entry of the writ, — 2 0

And for the entry of the writ, — 2 0

And for every other cause returned, — 2 0

For the signing of all Processe upon informations, excepting the first *Sub-pœna*, — 1 4

The Prothonotaries Clerks Fees.

In prim' For the copies of common Declarations & Pleas, for every sheet containing twelve lines, and every line ten words, — 0 4

For every sheet in reall and mixt actions, and actions upon the Statute and the like, — 0 8

For drawing of every speciall Declaration and Plea, for every sheet — 0 8

For every continuance every Terme, of every Issue, Writ, Imparlance, Demurrer, or speciall verdict, or Adjournament, — 0 4

	s	d
For exemplifying of every Recovery with a ſingle Voucher,	4	6
For exemplifying of a double Voucher,	6	0
And for every Voucher more,	1	0
For exemplifying of any Record not exceeding eight ſheets,	5	0
And for every ſheet more,	0	6
For drawing of every extraordinary long writ after the rate, for every ſheet	0	8
And for the entry thereof, if it ſo require, for every ſheet	0	4
For the copy of a Judgment, for every ſheet	0	8
For the entry of every writ and the return thereof, into the Prothonotaries Remembrance; for the drawing up of a Judgement if it exceed not three ſheets,	0	6
And for every ſheet after,	0	4
For entring every common rule into the bill of Pleas, or common Remembrance,	0	4
For the entring and engroſſing every Summons for a Recovery, and for the making of the writ of Summons,	2	0
For the entry of every *mittimus* and *dedimus poteſtatem* for a Recovery,	2	6
For the ingroſſing of every *Niſi prius*, after the rate for every ſheet	0	4
For the entring of every *Teſtat' ſur', ca. ſa. & fi. fa.*	0	4
For the ſearch of one Terme in the Prothonotaries Office, in his Doggets or Remembrance,	0	4

For

	£	s	d
For the iſſuing out of the Court money, of the party receiving it, in every pound,		0	4
For the making of every long writ, as Prohibitions, and the like, for every ſheet,		0	4
For the proſecution and ſuing out Proceſſe for the King, to bring in the party for to make fine for his contempt, untill the party render himſelfe, or be outlawed, beſides the Fees of the Court,		3	4
And if there be cauſe of proſecution after the Exigent returned, then more		3	4
For the copies of Suggeſtion in every Prohibition for every ſheet,		0	8
For drawing of every ſurmiſe to have a Prohibition, ſpeciall verdict, and the like, for every ſheet,		0	8

The Prothonotaries Clerks Fees for Informations onely.

	£	s	d
FOr ingroſſing of every Information,		0	8
For a copie of the ſaid Information, if it amount to the number of five ſheets of paper or upwards,		3	4
If it be under the number of five ſheets, then for every ſheet,		0	8
For the making of every *Copias pro fine* upon an Information,		0	6
For the entring of the generall iſſue upon the roll where the Information was firſt entred, in the Terme it was firſt exhibited,		0	8

For

	£	s	d
For the registring of every licence to compound in the Office book,	0		4

An ancient Fee due to the second Prothonotaries Clerk only.

	£	s	d
For recording of every Fine acknowledged at the Barre by writ, and moved by a Serjeant,	0		4

Fees due to the Secondaries of the three Prothonotaries in their severall Offices.

	£	s	d
For the copie of every common rule,			4
For taking a note of the rule of the Judges in Court upon the motion of a Serjeant, for drawing the same rule in paper in Latine words, and entring it into the bill of Pleas, and the copie thereof, the draught not exceeding sixe lines in paper,			8
If the rule exceed six lines, then	1		0
For every wager of Law in Court, or nonsuit of the plaintiffe upon a wager of law,	1		0
For the entry of the *committitur* of any Defend. to the Fleet, in execution of any Judgement, or otherwise in Court, and for making a copie thereof for the Warden of the Fleet, containing the cause of the commitment,	1		0
For the entry of every commitment to the Fleet of any prisoner yeelding himself in discharge of his bail, And for the like copy,	1		0

For

	£	s	d
For attending the Judge from his Chamber to Weſtminſter to take any privie Verdict tryed at the Barre,		3	4
For reading the Record of a Demurrer in Court, or ſpeciall verdict,		1	0
For taking Baile in Court,		1	0
For entring of an admiſſion of an Infant to his *Prochein Amye*, or Gardian in the Prothonotaries Remembrance,		1	0
For the copie of the iſſue, and Jurors names to be delivered to the Jury upon any tryall at the Barre,		1	0
For reading of Evidences upon tryals at the Barre of each party, plaintiffe and defendant,		3	4
For entring of every ſatisfaction by ſpeciall warrant *Recordatur ad diſcontinuance*,		0	8
For every ſatisfaction by generall warrant,		0	4
For entry of every Will, or letters of Adminiſtration to enable an Executor or Adminiſtrator to acknowledge ſatisfaction, and the entry of the ſatisfaction,		1	0
For every copie of Interrogatories and Depoſitions, and perſons examined upon Interrogatories by order of the Court, for every ſheet,		0	8



The manner of proceeding in the CHANCERIE.

NOtwithſtanding the practice here before this time hath been, That no *Sub pœna* ſhould bee ſued forth of the Court of *Chancery* without a bill of complaint firſt exhibited: yet of late, for the eaſe of all ſuiters and ſubjects, it hath been thought good, that every man may have a *Sub pœna* out of the ſame Court, without any bill firſt exhibited.

And this is called a *Sub pœna ad reſpondendum*.

This *Sub pœna* is the leading Proceſſe of this Court, by which the party defendant againſt whom the complaint is intended is ſummoned, and required to appeare and make anſwer to the complainant, under a certaine paine, and at a certaine day to come.

The dayes of Returne here are the usuall Returnes, as in the ordinary *Almanack*; or else a *Subpœna* may be returneable at a certaine day, after any the said usuall Returnes, or the great Feast dayes, from whence the Returns take their denomination: So that you must adde (*prox'*) in place where cause shall require.

As, if the Feast day be to come, then it must be *Prox. futur. in unum mensem.*

But if the Feast day bee past, then it must bee *à die Paschæ in unum mensem Prox futur.*

And the like to other Returnes, before or after other Feast dayes.

Where, note what time you have for exhibiting of your Bill after the day of Return prefixed in your writ of *Subpœna*: If it be returneable upon a generall Return day, as *Craſtin'*, *Octabis*, *Tres*, *Mansf'*, *&c.* after such a Feast, then you have time to put in your Bill untill the second day before noone next following, the fourth day following every of the said Returnes: and you must account the Returne day, and the fourth day after it for two of the said foure dayes.

But if the *Subpœna* be returneable on such a certaine day of the moneth, then your Bill must be put in the second day after it, before dinner.

And howsoever the *Subpœna* be returnable, if it be but served on the same day whereon it is returnable, before noone, and the rising of the Court of *Chancery*, it is a good serving, and binds the defendant so served to an appearance with all convenient speed.

If

If a *Sub pœna* be returnable on a day certaine, as on any day of the moneth, the bill not beeing in, the defendants Attorney may preferre coſts the next day after; and if the bill come not in the next day after coſts ſo preferred before noone or preſently after dinner, the defendant is diſcharged with ſuch coſts as a Maſter of the Court taxes him.

And ſo in the like caſe for a *Sub pœna* that is returnable on a returne day, the next day after the fourth day is coſt day, and if the bill come not in the next day at noone or preſently after dinner, the defendant, having preferred his coſts the day before, is diſcharged from attendance, with his coſts.

When the defendant hath ſo got coſts, hee may have a *Sub pœna* whereby to command the complainant preſently, upon the ſight thereof, to pay the defendant or the bringer thereof the ſaid coſts, (as aforeſaid:) Which *Sub pœna* muſt be ſerved on the plaintiffe perſonally. And if the complainant doe refuſe to pay the ſaid coſts accordingly, then the defendant may, upon *Affidavit* made that the *Sub pœna* for coſts was ſerved, have an Attachment directed to the Sheriffe of the County, to attach the complainant therefore.

And upon returne made by the Sheriffe that the complainant cannot bee found, an Attachment with Proclamation may be ſued forth againſt the complainant.

And that Proclamation being likewiſe returned by the Sheriffe (as aforeſaid,) then a Commiſſion

of Rebellion may bee ſued forth againſt the complainant.

But on the contrary, if the complainant doe put in his bill, and the defendant appeareth not the next day after coſts day (which coſts day is uſually the next day after the four dayes upon a returne is out, or if the *Sub pœna* bee returnable on a day certaine, then the next day after is coſts day) then the complainant upon oath made that the defendant was ſerved with a *Sub pœna*, may have an Attachment, and further Proceſſe upon the Sheriffes returnes of *non eſt inventus*.

Where note, that the party which maketh oath that hee ſerved the *Sub pœna*: Or that the *Sub pœna* was ſerved, muſt ſweare as followeth:

That he delivered the *Sub pœna* to the defendant.

Or hee ſhewed the *Sub pœna* to the defendant under the ſeale of the Court, and delivered to him a note of the day of his appearance, or a labell of the *Sub pœna*.

Or he left the *Sub pœna* at the defendants dwelling houſe or lodging, where the defendant moſt abideth.

Or hee muſt ſweare that hee heard the defendant confeſſe that he was ſerved with a *Sub pœna*:

Or hee muſt ſweare that hee ſaw another ſerve the defendant with a *Sub pœna*.

Note, that if the party ſerved with any ſuch *Sub pœna* do wrong or abuſe the party who ſerved it for the ſerving thereof, or uſeth any words of contempt, or ſleighting of his Majeſties ſaid Writ;

upon

upon oath made thereof, and motion thereupon, hee is puniſhable for the ſame, by impriſonment in the Fleete, or otherwiſe, at the Lord Keepers diſcretion.

And if the defendant doe appeare within the time limited, then the complainants Attorney may give unto the defendants Attorney, on the ſaid day after the coſts day, a Rule, that the defendant do make anſwer to the complainants Bill, by the ſame day ſeven-night then next to come. This Rule and day given, muſt be entred into the Regiſter.

And if the defendant doe not anſwer by the prefixed day ſo entred; or if hee doe not otherwiſe ſatisfie the Court by ſufficient cauſe, and occaſion of the delay, then the complainants Attorney may take forth an Attachment againſt the defendant.

The Cauſes whereby the defendant may ſatisfie the Court of the ſaid delay in anſwer, are theſe, for the moſt part, of which the defendant muſt make oath, (viz.)

HEe cannot make direct anſwer, without ſight of his Evidences or Writings which are in the Country.

Or hee cannot anſwer without conference had firſt with ſome Perſon named in the ſaid Bill.

Or with ſome Perſon whom the matter toucheth.

Or

Or if the bill bee againſt the defendant, to expreſſe what goods hee hath of the plaintiffes, hee may make oath hee cannot make perfect anſwer to the plaintiffes bill without ſight and peruſall of the ſaid goods, which are in the country: And that place in the country, where thoſe goods or writings, or parties live, muſt bee above twenty miles from London, elſe hee muſt anſwer within eight dayes after his appearance, unleſſe hee get further time by order: And if hee doe make ſuch oath, then his anſwer is ſpared till the firſt day of the next Terme following.

This Oath to bee made by the Solicitor, or ſome other for the defendant.

Or that the defendant is not able to Travell without danger of his life, &c.

And if upon ſuch oath made, the plaintiffe refuſe to allow the defendant a *Dedimus poteſtatem* for taking his anſwer in the Country, the Court upon motion or petition will order it; which order is to be entred in the Regiſter, and the *Affidavit* filed in the *Affidavit* Office.

In caſe the defendant doe not appeare, or haveing appeared doth not anſwer in his time limited, nor ſheweth any of the aforeſaid reaſons in excuſe, then an Attachment is awarded againſt him, which muſt be entred both in the houſe-booke in the ſix Clerkes Office, and in the Regiſter, expreſſing the cauſe of the iſſuing of the ſaid Attachment.

But if no day bee given to the defendant to anſwer, then the defendant hath libertie to anſwer at any time during the Terme.

And

And if hee doe it not within that time, then an Attachment may bee ſued forth againſt him of courſe: and the ſame, with the cauſe thereof, muſt bee entred into the Regiſter: (*viz.*) That the defendant appeared, and departed without anſwer.

If the *Sub pœna* bee returnable ſo neere unto the end of the Terme, that there cannot bee a day given to the defendant to anſwer, hee muſt at his perill anſwer by the ſame day ſeven-night following the day of his appearance, although it bee in the Vacation: For the *Chancery* is alwayes open, It is *Officina ſemper aperta.*

If the *Sub pœna* be returnable on the laſt *returne* day of the terme it ſelfe, then the defendant is at liberty to appeare the firſt returne of the Terme following.

But if it bee a day certaine, although the ſame bee the laſt day of the Terme, yet the defendant muſt appeare, and anſwer by that day ſeven-night next following the ſaid appearance.

Note, there are no ſuch *Sub pœnas* to anſwer returnable immediatly in Terme time.

And if the defendant make oath that hee cannot anſwer without Writings, &c. or conference with ſome other perſon: Or if hee have a *Dedimus poteſtatem*, and Commiſſion to make his anſwer, hee muſt at his perill procure his anſwer to bee put in before the day after the firſt Coſts day of the next Terme following, unleſſe it be Trinity Terme; and then, and in ſuch caſe, it muſt bee put in the ſecond day after the ſecond returne, elſe the

the complainants Attorney may, upon ſuch default, make an Attachment againſt the defendant, and enter the ſame into the Regiſter, for that hee hath not anſwered by the day prefixed.

Or in other caſe, that hee appeared and departed without anſwer; Or otherwiſe, that hee did not returne the *Dedimus poteſtatem* at the day prefixed, &c. and as the cauſe ſhall require.

If a defendant living in the Country, having a *Dedimus poteſtatem* granted him for the taking of his anſwer to the plaintiffes bill, or his Counſell finde there is cauſe of Plea or Demurrer, upon a motion or petition hee may have a ſpeciall *Dedimus poteſtatem* by order, to anſwer, pleade, or demur; but the Commiſſioners upon an ordinary *Dedimus* have no power to take any thing but an anſwer; and if a Demurrer bee put in without Commiſſion, the party muſt put the ſame in into the ſix Clerkes Office in his owne perſon: And if the Demurrer or Plea bee not put into the paper of Pleas and Demurrers in the Regiſter appointed for that purpoſe, within eight dayes after the ſame is put in Court, to the end the ſame bee argued before the Lord Keeper, as it ſhall fall in courſe after others; then the ſaid Plea and Demurrer is over-ruled of courſe, and the plaintiffe may take forth a *Sub pœna* againſt the defendant to make a better anſwer, and another for coſts, according to the Lord Keepers late Orders.

This was wont to bee the courſe, but my Lord Keeper of late hath declared, that if a bill have cauſe

cauſe of demurrer he will not a bad bill good.

In caſe a man be ſerved with a *Sub pœna* wherein his wife is named he being in *London* and his wife in the Country or elſewhere, if he appeare not for her, or ſhe anſwer not aſwell as hee, an Attachment is granted againſt them both though he appeare and anſwer for himſelf.

If ſhe doe not appeare, then the Attachment is againſt him and her for her not appearance.

If ſhe doe not anſwer, then againſt him and her for her not anſwering.

If a Complainant dye depending the ſuite, his Heire, Executor, or Adminiſtrator, who hath the intereſt in the thing complained for, may put in a Bill of *Revivor* againſt the Defendant: or if the Defendant dye, the Plaintiffe may put in a Bill of *Revivor* againſt his Heire, Executor or Adminiſtrator.

Alſo, it is to be remembred, that if the Complaynant exhibite his Bill againſt a Man and his Wife, for matter which wholly concerneth the Wife, whereunto they make Anſwer, and after Anſwer made, the man dyeth; the Complaynant cannot proceed in that ſuite againſt the Woman, without a Bill of *Revivor*, becauſe the Woman ſhall not be conſtrained to ſtand to that Anſwer, which ſhee together with her Husband, or ſolely (as wife unto the Man) made to the Complainant, for that ſhee was then under Coverture.

And after her Husbands death (ſhe being ſeized or poſſeſſed of the thing in Controverſie as in her

former estate) may (if she please) make a new Answer, and shall never be bound or concluded by the Answer which she made in her Husbands life time, for that she was then under Coverture. And yet (if she so please) she may stand to that former answer of hers, & proceed in that suit accordingly.

But if the Complaynant exhibite a Bill against a *Feme* sole, whereunto she maketh answer, and afterwards marryeth, the Complaynant may proceed against her Husband and her, without any Bill of *Revivor*: and her Husband shall be bound by that answer which she made before marriage, because shee shall not be admitted to take advantage of her owne act.

Where (on the contrary) if a *Feme* sole exhibite her Bill of Complaint, whereunto the Defendant answereth, and afterwards she taketh an husband, her husband and shee shall not proceed against the Defendant, without a Bill of *Revivor*; because her suite is abated by her owne act, whereof the Defendant may take advantage.

And if a Man and his Wife exhibite a Bill of Complaint, whereunto the Defendant answereth, and the Man dyeth, the woman shall be at her choice whether she will exhibite a new Bill, or proceed upon the former.

Note that in *Chancery* you cannot serve the Wife without her Husband, though the matter in question do only concerne her, and not him.

Also, if two seised of joint estate, or two Executors of one Testament, or two *Obligees* or *Obligees*,

Agee, Exhibite a Bill of Complaint, whereunto the Defendant answereth, and one of them dyeth: The Survivor of them may proceed against the Defendant, without any Bill of *Revivor*.

And in all cases where a Bill of *Revivor* is requisite after the said Bill exhibited, and a *Sub pœna* served on the Defendant to that purpose; the Complainant shall be in the same case, as he for his Predecessor was, at the time when the cause of *Revivor* accrewed, unlesse the Defendant shall appeare upon the said *Sub pœna*, and by way of Answer shew good cause to the contrary: which Cause must be, that the Complaynant in the Bill of *Revivor*, is not Heire, or Executor, nor standeth in the like case, nor have the like interest, or the like cause of Complaint, as before in the former Bill.

And no other cause is to be allowed.

If the Complaynant exhibite his Bill of Complaint, for Title of any Lands, not of the yearly value of forty shillings: And the same be proved by *Affidavit*, or deposed, the Defendant shall be dismissed.

Also, if the Defendant demurre to any Bill exhibited against him, or disclaime: the Complaynant cannot reply.

For if the Defendant be called up by *Sub pœna ad Rejungendum*, having before made no other answer but a *Demurrer* or a *Disclaimer*, he shall have costs for unjust vexation.

But after the Defendant hath answered, the

Complaynant hath liberty all that Terme, and all the next Terme following that; and untill the beginning of the ſecond Terme after anſwer, to put in his Replication.

The next Terme after Anſwer put in, the Defendants Attourney may give the Plaintiffe a Rule to Reply, and if he doth not Reply, then Coſts are awarded, and if he give no Rule and the Plaintiffe reply not the ſecond Terme after the Terme the Anſwer was put in, the Bill may be diſmiſſed with Coſts by morgage or of courſe.

But if the Complaynants Replication be put into the Court, the Defendant can have no coſts allowed unto him.

But then the Defendant may, if he will, *Rejoine gratis* to the *Replication*, and enforce the Complainant to goe to Commiſſion.

Which if the Complainant refuſe, then the Defendant may have Commiſſion to examine Witneſſes on his owne part againſt the Complaynant, and ſhall have the carriage thereof.

This Commiſſion ſhall bee directed to foure ſuch perſons as the Defendant ſhall name; or to any three or two of them, without any warning to be given to the Complaynant.

But if in this caſe the Complaynant will, hee may joyne in Commiſſion, and have the carriage of it himſelfe.

And then he muſt name foure Commiſſioners indifferent men; and the Defendant foure more, and two being ſtrooke out on each ſide the Commiſſion,

miſſion is made up to the foure that remaine: and the Complainant having the carriage of the Commiſſion muſt give the Defendant fourteen dayes warning of the day and place when and where the Commiſſion ſhall be executed.

This warning muſt be given, either by himſelf in perſon, or elſe left in Writing, at the Houſe or place where the Defendant doth moſt reſide.

The Complaynant in all caſes of Commiſſion to examine witneſſes, ſhall have the firſt choice of Commiſſioners, and carriage of the Commiſſion, and if he faile by not executing it, then the Defendant may renew it and have the Carryage thereof, and give the Complaynant the like notice.

If a Defendant be ſerved with a *Sub pœna ad Rejungendum*, and Oath be thereof made; Commiſſioners names being called for in the Terme time to the Defendants Attourney, and the Defendant refuſe to joine in Commiſſion the ſecond Seale after the Terme, the Complainants Attourney may make a Commiſſion *ex parte* to the Complainants owne Commiſſioners and Intereſſers muſt be included in the Commiſſion.

Hee ſhall examine Witneſſes, in all theſe caſes following: (Viz.)

FIrſt, upon a Bill by him preferred to examine Witneſſes in perpetuall memory of the matter: to command the Defendant either by himſelfe,

or

or by his Attourney to appeare immediatly, and within foureteen dayes to shew cause why the Complaynant should not examine Witnesses (in perpetuall memory.)

And if the Defendant doe thereupon appeare by himself, or his Attourney, and shew good cause to the contrary, such as the Court shal allow, then the Complaynant shall not examine any witnesses *in perpetuam rei memoriam*, or perpetuall memory.

But if he doe shew no sufficient cause, nor joine in Commission with the Complainant, then the Complaynants Attourney must preferre six Commissioners names to the L. Keeper, or the Court, &c. Four of the which, or four such other, as the Lord Keeper or the Court shall appoint, shall bee set downe for Commissioners, and a Commission for the Complaynant shall be made forth, and directed to the said foure Commissioners, or any three, or two of them, to examine witnesses, according to certaine Articles heretofore set downe in *Chancery*, which Witnesses are never to be published, during their lives, unlesse Oath bee made.

That the Complainant hath some tryall wherein he should give them in Evidence.

That the Witnesses are not able to travell to the place where the tryall should bee.

Or the Party Defendant will consent thereunto.

Neither can they be given in Evidence against any

any other, but againſt the party which was called, to ſhew cauſe why the ſaid witneſſes ſhould not be examined, or ſome other, claiming under him by ſome intereſt which accrewed unto them, after the Bill preferred by the Complainant for the examination of witneſſes.

It is alſo uſed, that either party, after the Bill is exhibited, and Anſwer made thereunto, may examine witneſſes in Court here before one of the Examiners.

But the Complainant can have no Commiſſion to examine his witneſſes, unleſſe, and before the Defendant be ſerved with a *Sub pœna ad Rejungendum*: Which *Sub pœna* muſt be ſerved in ſuch manner as is before mentioned:

And then upon *Affidavit* made of the ſerving thereof, the Complainant (if the Defendant appeare not that Terme) ſhall have a Commiſſion directed to four ſuch Commiſſioners as himſelfe ſhall name, or to any three or two of them, for the examination of witneſſes on his part, againſt the Defendant, without any warrant to be given to the Defendant.

Upon the returne of the ſaid *Sub pœna ad Rejungendum*, The Complainant may give to the Defendant a day to *Rejoyne*, (*viz.*) The ſame day ſeven-night.

By which time, if the Defendant doe not rejoyne, he ſhall loſe the benefit thereof.

And when that day ſo given to rejoyn, is paſt, the Complainant may give two ordinarie dayes,

dayes, (*viz.*) two Returnes, for the Defendant to produce his witneſſes; And then a Peremptory day:

Before which day paſt, if the Defendant doe come in, he may have a Commiſſion to examine witneſſes of courſe, without any motion; but hee ſhall loſe the benefit of *Rejoynder:* And the Complainant, if he pleaſe to joyne in the Commiſſion, ſhall have the carriage of it, giving to the Defendant fourteen dayes warning of the day and place, when and where the ſaid Commiſſion ſhall be executed.

In the joyning of this Commiſſion, the Complainant muſt firſt name one Commiſſioner, unto whom the Defendant may give generall exception:

The Defendant muſt name the ſecond;
The Complainant the third;
And the Defendant the fourth.

The common exceptions which be given to Commiſſioners are theſe, (viz.)

THat the Commiſſioner named, is of Kindred or Allyed to the party, for whom hee is named:

That he is a Maſter to the partie:
That he is a Land-lord unto him:
Or a Partner unto him:
Or have ſuite in Law with the adverſe partie to him, by and for whom hee is named:

Or

Or is it of Counsell, an Attourney, or a follower of the cause of the one party:

Or to whom the party is indebted:

Or any other apparent cause of partiality, or fiding with either party.

And it is commonly used, that either party may give exception to one, and they seldome give exception to any more then one, on either party.

And yet nevertheleſſe, the Complainants Attourney may, if the Complainant will, renue the ſaid Commiſſion alſo, and give the like warning alſo unto the Defendant, if the Defendant renue it not.

Upon the execution of either of which Commiſſions, and returne whereof, either of them may give to the other a Rule for publication thus: *Vic. dies dat' defend' pro publicat. ſuper Commiſ. iuntt.* If the Defendant give the Rule, then thus: *Dies dat' quer' pro public. ſuper Commiſ. iuntt.*

The day ſo given, is one weeke; which being expired, and no cauſe ſhewed to the contrary, then Publication is granted, and neither party can examine any witneſſes afterwards, unleſſe it be by ſpeciall order of the Court, which is never granted without an Oath made, that the party which requireth the ſame, nor any of them hath ſeen, or been made privy to any examination of any of the Witneſſes formerly examined in this Court by either of the parties. And ſome good cauſe be ſhown, either by oath, or certificate of Commiſſioners, why the party could not get his ſaid wit-

neſſes examined within the time limited for their examination.

In which caſe, ſometimes the Court giveth order to examine witneſſes by a time prefixed, with this *Proviſo*; That the party ſhall not in the meane time ſee the ſaid former examination.

And ſometimes the Court giveth Order, that the ſaid party ſhall examine his witneſſes, to informe the conſcience of the Judge onely, and not otherwiſe.

Theſe Depoſitions are never publiſhed, but by ſpeciall order or conſent of the parties; but delivered to the Judge, ſealed up by the Officer, under whoſe cuſtody they doe remaine, to the end hee may peruſe them.

If any one be called by a *Subpœna* to appeare in this Court: And upon his appearance, the complainant or any other doth arreſt him in any other Court; he ſhall have a *Superſedeas* to diſcharge the Action, becauſe he muſt have free going and free comming.

But it is not ſo, if the complainant be arreſted, except it be after iſſue is joyned, and a day is given for the matter to be heard. And the Complaynant comming to the Court, with evidence to maintain his cauſe, is arreſted: The Court in this caſe ſhall defend him, and ſet him free to follow his ſuite.

But this is ſeldome ſeene: And he that is Plaintiffe in the other Court, may declare againſt him here *Præmiſſis in curia*, if he pleaſe. See 37 Eliz.

If any one who hath Priviledge in Chancery, be arreſted:

arrested into another Court, in a joynt action with his Wife, for matter concerning her: Notwithstanding the Coverture, she shall not have any benefit of Priviledge here. See *Paules* case.

The Clerkes of *Chancerie* are to be sued in this Court, either by Latine or English Plea.

The Order made and ordayned by Sir Nicholas Bacon, *Knight, Lord Keeper of the Great Seale, touching the Examination of witnesses* (in perpetuam rei memoriam:) *Dated the tenth of December, in the third yeare of the late Qu.* Eliz. *followeth.*

FIrst the Commissioners shall examine no Witnesses, but such as be aged and impotent.

Item, the Complaynant, or party, who sueth forth the commission, shall give warning by precept from the Commissioners, unto the party that should take prejudice by this examination, by the space of fourteen dayes at the least, of the time, and place; when, and where the said commissioners will sit upon this commission.

And the same warning being so given, the commissioners are to be satisfied by the Oath of the party complainant, or of some other credible person, that warning is given accordingly, before they shall proceed to the execution of their Commission.

Item, If the party Adversant, or Defendant can shew before the Commissioners good cause of exception,

ception, either againſt the witneſſes produced by the complainant, or any of them, or againſt the Commiſſioners themſelves; or otherwiſe, then they ſhall ceaſe and forbeare any farther execution of the commiſsion.

And the Commiſsioners ſhall certifie and returne the ſaid cauſes and exceptions up with the commiſsion.

Item, If the party adverſant cannot ſhew ſufficient cauſe, (as aforeſaid) then the commiſsioners ſhall proceed to the examination of witneſſes; and the party adverſant, or defendants ſhall have liberty to joyne in the examination of the ſame witneſſes, or of any other likewiſe upon Interrogatories on his behalfe (if he think good).

Item, The commiſsioners ſhall certifie in their returne of the commiſsion, ſuch acceptations as the defendant ſhall take againſt the proceeding in the ſame commiſſion, and whether the Defendant did appeare or no?

And if the Defendant did not appeare, they are likewiſe to certifie and returne, whether *Affidavit* were made of the giving of warning by precept (aforeſaid) or no?

Orders to be obſerved before the graunting of Publication of the ſayd Commiſsion.

THe party who prayeth Publication, ſhall firſt by himſelfe, or ſome other, make Oath that the Depoſitions of the ſame witneſſes, are neceſſarily

rily to be given in evidence on his behalfe.

Item, Oath alſo muſt be made, that the ſame Witneſſes be either dead, or ſo aged, or impotent as they cannot travell to teſtifie (*viva voce*) without danger of life.

Item, This Oath being ſo taken, a Maſter of the *Chancerie* muſt firſt open the Commiſſion, and conſider whether this Order before mentioned hath been obſerved in all points: wherein he being ſatisfied, Publication is thereupon to be granted.

Provided alwayes, that no Depoſitions ſhall be given in evidence, but againſt thoſe perſons that were warned by precept (as aforeſaid) or againſt their Heires or Aſſignes.

And provided alſo, That after examination had, and taken (as aforeſaid,) and after Publication had, and granted of the ſame examinations: The party Adverſant, or Defendant, ſhall not be admitted to have any new examination on his behalfe, concerning the ſame matter.

Item, This Order is to be obſerved in caſe wher the commiſsion is *ex parte querentis* onely, and it is to be engroſſed in Parchment, and ſubſcribed with the hand of the Regiſter, and to be annexed to every of the ſaid commiſsions, but not otherwiſe.

For if the Defendant joyne, then theſe Articles ſhall not need.

The

The difference used between a Joynt-Commission in the aforesaid nature, and a Commission ex parte *followeth.*

THe Joynt-Commission is made in forme, as all other generall commissions to examine witnesses, *Super Interrogator. ministr and.* be, Adding to the end of the same, these words *(viz.) In perpetuam rei memoriam permansur.*

This Commission *ex parte*, is to have these rules inserted under the Registers hand, and the Commissioners names are specially to be assigned by the Lord *Keeper*, or Lord *Chancellour* for the time being.

Termino Michaelis, Anno Regni Elizab. *Reg. Sext.*

MEmorandum, That all Injunctions granted for preservation of possession, during the suite in the Court of *Chancery*, shall have this clause and condition contained in them (*viz.*) That the party who prayeth possession, was in possession at the time of the Bill exhibited, and certaine yeares before; And that his interest is not determined by forfeiture, surrender, or other lawfull meanes.

And Bond must be put in by the party who prayeth the possession, of the penalty of tenne pound, with condition that this Information aforesaid is true.

Item,

Item, That all Injunctions granted for the ſtay of Suits at the common Law, ſhall have this clauſe and condition contained in them: (*viz.*) That the ſame Suite deſired to be ſtayd, is for and concerning the ſame matter depending in this Court, and as were begun at the common Law, after the Bill exhibited into this Court; and that Bond be put in (as aforeſaid.)

Item, That no *ſpeciall Certiorare* doe paſſe without Bond firſt given, on the behalfe of the party who deſireth the ſame, with condition that the Bill exhibited containeth matter ſufficient to beare a *Certiorare*, and that he ſhall prove the aboundants of this Bill to be true, within fifteen daies after the return of the Writ, according to the Order and courſe of this Court.

And that upon the granting of every *Prouiſo* do, that Bond aforeſaid be remembred to the Lord Keeper.

Verulam Tricesimo primo Regni Regis Iacobi.

IT is ordered, that all Suits for no more then ſix pence of Land, or ſoſſ, except the ſame be, which Forty ſhillings by the yeare, [illegible] and all Suites for matter under the value of ten pounds, ſhall be diſmiſſed this Court, for ſuch cauſe only proved. And this Court ſhall not retaine any ſuch: But the party who bringeth the ſame hither, ſhall pay coſts to the Defendant, as this Court ſhall award.

The *Proceſs* now is made retornable but three daies before the hearing.

Termino

Termino Michaelis, Anno Regni Eliz. Reg. Septimo.

IT is ordered, that all *Processe* to bear Judgement, be returnable ſix or ſeven dayes before the day of Hearing, and not above, ſaving in the beginning of the Terme, when the time will not permit ſo long warning.

And the ſaid Writs muſt be endorſed on the backſide, with the very day appointed for the hearing of Judgement. And ſo much for that Terme.

By the generall cuſtome, and ancient uſage of this Court, all Bils ſhall be retaineable here, in caſe where the Equity of the cauſe requireth and beareth it, and wherein the common Law doth afford no reliefe, but rather preſſure and rigour.

After Publication once had, the Complainant may procure a day of Hearing of courſe, by ſuch an one of the ſix Clerks as dealeth for him. And he may at the end of the Term, when the Lord Keeper ſetteth down the dayes of Hearings, procure his hearing to be ſet down amongſt thoſe aſsigned for the next ſucceeding Terme.

This was wont to be the ancient courſe of procouring of hearings, howſoever it was lately diſuſed, and (as I take it) the ſame is now reſtored lagaine, to the good contentment of all Suitors in this Court.

The Order of Proceeding against such as refuse to obey his Majesties Injunctions, proceeding and issuing out of the Court of Chancerie.

FOr the breach of an Injunction, this is the course commonly.

If the *Contemptor* doe not upon sight of the *Injunction* obey the same, but doth commit some Act in contempt or neglect thereof, then upon an *Affidavit* made of the serving of the said *Injunction*, and of the breach thereof, then an Attachment is awarded against the said *Contemptor*, &c. as in the case of *Proces*, before mentioned and declared, and so further *Proces* to common Rebellion and Serjeant at Armes, &c.

The Modern Orders and Ordinances of Chancery follow.

Affidavits.

NO *Affidavit* shall be admitted or taken which shall tend to the proof or dis-proof of the Title or matter in question, or touching the merits of the cause.

Neither shall any such matter be colourably inserted, in any *Affidavit* to be made touching the *Serving* of *Proces*.

No *Affidavit* shall be taken against *Affidavit*, so farre as the Master of *Chancery* can discerne, or take knowledge, &c.

If any such be taken, the latter shall not be used or read in Court.

Contempts.

IN case of Contempts, granted upon force, or ill words, used upon serving of *Proces*, or other words of *Scandall*, proved by *Affidavit*, the party forthwith upon motion will be committed, if the words spoken deserve it.

But for other Contempts, against the Orders or Decrees of the Court:

First, an Attachment goes forth upon *Affidavit* made.

Then the party being taken is to be examined upon Interrogatories.

His examination is to be referred, upon motion, to one of the Masters of the *Chancery*.

And if upon examination, he confesse matter of Contempt, he is to be committed, upon the like motion.

If he confesse it not, the Adverse party may upon like motion and order examine witnesses to prove the Contempt.

And if the Contempt appeare upon proof, the contemptor is to be committed therefore, upon motion and order likewise.

But if the adverse party fail to prove the said contempt, or fail to put in his Interrogatories or other prosecution, then the party charged with the contempt,

tempt, is to be discharged upon motion with good costs.

Imprisonment upon *Contempts* for matters past, may be discharged of grace, after sufficient punishment: Or it may be otherwise dispensed withall in such case.

But if the imprisonment be for performance of any Order of the Court in force: Then the *Contemptor* ought not to be discharged, except hee first obey: Onely, the Contempt may be suspended for a time.

Petitions.

NO *Injunctions, Sequestration, Dismissions, Retainer* upon *Dismissions*, or *Finall Orders*, shall be granted upon *Petitions*.

No former Order made in Court, is to be altered, crossed or explained upon any *Petition*: But such Orders may be onely stayed upon *Petition* for a small time, till the matter may be moved in Court.

No *Commissions* for examination of Witnesses shall be discharged; Nor any examinations, or depositions of Witnesses shall be suppressed upon *Petition*, unlesse it be first referred, and Certificate be made thereupon.

Injunctions.

INjunctions for possession or for stay of Suites after verdict, are to be presented to the Lord *Kee-*

per, or Lord *Chancellour*, being together, with the Orders whereupon they go forth; that his Lordſhip may take conſideration of the Orders before he ſigne them.

No *Injunction* of any nature ſhall be granted, revived, diſſolved, or ſtaid upon private Petition.

No *Injunction* to ſtay Suites at the Common Law, ſhall be granted upon *Prioritie* of Suite onely:

Or upon the *Surmiſe* of the Complainants Bill onely.

But upon matter confeſſed in the Anſwer of the Defendant.

Or matter of Record.

Or writing plainely appearing.

Or when the Defendant is in contempt for not anſwering.

Or when the debt deſired to be ſtaid, appeareth to be old, and hath ſlept long.

The creditor and the debtor have been dead ſome good time, before the Suite brought.

Where the Defendant appeares not, but ſits an Attachment: Or when he doth appeare and departs without anſwer, and is under attachment for an anſwering: Or where he takes Oath, that he cannot anſwer without ſight of Evidences in the Countrey: Or abſenting himſelfe in one private place, or beyond Sea, and cannot be found to be ſerved with a *Sub pœna*, upon Oath made an *Injunction* is uſually granted.

In all theſe caſes, an *Injunction* may be granted, for

for ſtay of ſuites at the Common Law, untill the party anſwere, or appeare in perſon in Court, and the Court give further order.

An *Injunction* never is diſſolved without motion on the adverſe part.

In the caſe aforeſaid, where an *Injunction* is to be granted, for ſtay of ſuits at the common Law; if the like Suits be in the *Chancery*, either by *Scire facias*, or by *Priviledge*, or *Engliſh* Bill; then the Suit is to be ſtayd by order of the Court, as it is in other Courts by *Injunction*.

An *Injunction* is uſually granted, if the party Defendant be in Contempt, or matter confeſt, though after an arreſt, or further proceedings at Law without bringing money in Court.

Injunctions for *Poſſeſsion* are not to be granted before a *Decree*, but where the Poſſeſsion hath continued by the ſpace of three yeares paſt before the Bill exhibited, and upon the ſame Title, and not upon any Title by leave or determined.

In caſe where the Defendant ſits all the proceſſe of Contempt, and cannot be found by the Sergeant at Armes, or reſiſts the Sergeant, or make reſcues, a Sequeſtration ſhall be granted of the Land in queſtion, and if the Defendant do not render himſelf within the yeare, then an *Injunction* ſhall be granted for the Poſſeſsion.

Injunctions againſt the felling of Timber, or plowing up of ancient Paſtures, or for the maintaining of Incloſures, or the like, ſhall be granted according to the circumſtances of the caſe, but not

in

in case where the Defendant upon his answer, claimeth a state of inheritance, except it be where he claimeth the Land in trust, or upon some other speciall ground.

Injunctions shall be enrolled, or the *Transcripts* thereof be fyled.

Order.

WHere any Order shall be made against the generall Rules of the Court, there the *Register* shall plainly and expressly set down the particular reasons and grounds, moving the Court to vary from the generall rule.

No order of the publike Court is alterable upon *Petition: vid.* in the Title petition.

Register: Order.

THe *Registers* are to be sworne.

If any Order shall be made, and the Court not informed of the last marriall Order formerly made, no benefit shall be taken by such Order, as being granted by abuse, and surreption: And to that end, the *Register* ought duly to mention the last former Order in the present Order.

No Order shall be explained upon any *Petition*, but onely in Court as they are made, and the *Register* is to set downe the Orders, as they are pronounced by the Court, truely, at his perill, without troubling the Lord *Keeper*, or Lord *Chancellour*, by

by any private attending of him, to explaine his meaning; and if any explanation be desired, it is to be done by publike motion, where the other party may be heard.

No draught of any Order shall be delivered by the *Register* to either party, without keeping of a Copy by him: to the end that if the Order be not entred; nevertheleſſe, the Court may be enformed what was formerly done, and not be put to a new trouble, and to the end alſo, that knowledge of Orders be not kept back too long from either party, but may preſently appeare at the Office.

Where a cauſe hath been debated upon hearing of both parties: and opinion hath been delivered by the Court; and nevertheleſſe, the cauſe referred to Treaty: the *Regiſters* are not to omit the opinion of the Court in drawing of the Order of Reference, except the Court doe ſpecially declare, that it is to be entred without any opinion either way.

In which caſe, nevertheleſſe, the *Regiſters* are out of their ſhort Notes to draw up ſome more full remembrance of that which paſſed in Court, to informe the Court if the cauſe come back, and cannot be agreed.

The *Regiſters* upon delivery of the draught of any Order, unto the counſell of either party, are not to reſpect the interlinations, or alterations of the ſaid Counſell (be the ſaid Counſell never ſo great) further then as to put them in remembrance of that which was truely delivered in Court; and

ſo

ſo to conceive the Order upon their Oath and duty, without any other or farther reſpect.

The *Regiſters* are to be carefull in the penning and drawing up of *Decrees*; and eſpecially in matters of difficulty and weight; and therefore when they preſent the ſame to the Lord *Keeper*, or Lord *Chancellour*, they ought to give him underſtanding which are ſuch *Decrees* of weight, that they may be read and reviewed, before his Lordſhip ſigne them.

Decrees.

THe *Decrees* or diſmiſsions made or granted in the Rolles, and thoſe that are made in Court at Weſtminiſter on Weddenſdayes or Fridayes, when the Lord *Keeper* is not preſent (being drawn up) are firſt to be ſigned by the Maſter of the Rolls, or the Judge that ſat at the hearing of the cauſe, and then preſented to the Lord *Keeper* to be likewiſe ſigned; which being done, then the ſame are to be enrolled.

NO *Decree* ſhall be reverſed, altered or explained, being once enrolled, but upon Bill of *Review*; and no Bill of *Review* ſhall be admitted, except it be upon errour in Law, appearing in the body of the *Decree*, without farther examination of matters in fact, or hee ſhall ſhew ſome new matter which hath riſen in time after the *Decree*, and not any new proof, which might have been uſed when the *Decree* was made.

Never-

Nevertheleſs, upon new proof which is come to light ſince, and after the *Decree* made, and could not poſſibly have been uſed at the time when the *Decree* paſſed, a Bill of *Review* may be granted by the ſpeciall Licenſe of the Court, and not otherwiſe.

Alſo upon a Bill of *Review* the party Complainant is to put in ſecurity before one of the Maſters of the Court, to ſtand to and performe the order of the Court, upon the hearing upon ſuch Bill of *Review*.

In caſe of miſ-caſting, being a matter Demonſtrative, a *Decree* may be explained, and reconciled by an Order without Bill of *Review*.

Where note, that by the word *Miſ-caſting*, is not intended any pretended *Miſ-caſting*, or miſ-valuing, but onely errour in the Auditing, or numbring.

No Bill of *Review* ſhall be admitted, or any other new Bill to change matter decreed, except the *Decree* firſt obtained, be performed: And if it be for Land, that the poſſeſſion be yeelded: If it be for money, that the money be paid: If it be for evidence, that the evidence be brought in; and ſo in other caſes which ſtand upon the ſtrength of the *Decree* alone.

But if any Act be deſired to be done, which extinguiſheth the parties right at the Common Law (as making of Aſſurance and Releaſe, Acknowledging of Satisfaction, Canceſſing of Records or Evidence, and the like) Thoſe parts of the *Decree* are to be ſpared, untill the Bill of *Review* be deter-

mined: But such sparing is to be warranted by publick Order made in Court.

No *Decree* shall be made upon pretence of equity, against the expresse provision of an Act of Parliament.

Nevertheless, if the construction of such Act of Parliament, hath for a time gone one way in generall opinion and reputation; and after by a latter judgement hath been controlled: Then Relieſe may be given upon matter of equity for cases arising before the said Judgement: because the Subject was in no default.

Imprisonment for breach of a *Decree* is in nature of an *Execution*, and therefore the custody ought to be straight, and the party not to have any liberty to goe abroad, but by speciall licence of the Lord *Keeper*, or Lord *Chancellour* being: But no close imprisonment is to be but by expresse order for wilfull and extraordinary Contempts and disobedience (as hath been used).

In case of obstinate disobedience, in the breach of a *Decree*, an *Injunction* is to be granted *Sub pœna* of a summe: and upon *Affidavit*, or other sufficient proof of persisting in contempt, Fines are to be pronounced by the Lord *Keeper*, or Lord *Chancellour* in open Court, and the same are to be estrated down into the Hannaper by speciall order.

In case of a *Decree* made for the possession of Land, a Writ of *Execution* goeth forth, and if that be disobeyed, then *Processe of Contempt*, according to the course of the Court, is to goe forth against the

the perſon unto the Commiſſion of Rebellion; and then a Sergeant at Armes by ſpeciall Warrant: and in caſe the Sergeant at Armes cannot find him, Or he be reſiſted, Or if hee upon his commitment doe perſiſt in his diſobedience, an *Injunction* is to be granted for the poſſeſſion, and in caſe that it alſo be diſobeyed, then a commiſſion is to be made to the Sheriffe, to put his adverſary into poſſeſſion.

Where the party is committed for breach of a *Decree*, he is not to be enlarged, untill the *Decree* be fully performed in all things which are to be done preſently.

But if there be other parts of the *Decree* to be performed at dayes or times to come: Then hee may be enlarged by order of the Court, entring into Recognizance with Sureties for the performance *de futuro*, but not otherwiſe.

Where cauſes come to hearing in Court, no *Decree* bindeth any perſon, who was not ſerved with Proceſſe *ad audiendum Judicium*, according to the courſe of the Court.

No *Decree* bindeth any one that cometh in *bona fide*, by Conveyance from the Defendant before the Bill exhibited; and is made no party either by Bill or by Order.

But where he comes in *Pendente lite*, and while the ſuite is in full proſecution, and without any colour of allowance, or privity of the Court: there regularly the *Decree* bindeth.

But if there were any intermiſſion of ſuite, or

the Court were made acquainted with the Conveyance, the Court is to give order upon the ſpeciall matter according to Juſtice.

Where a *Decree* made for a Rent to be paid out of Land, or a ſumme of money to be levied upon the profits of Land; there a *Sequeſtration* of the ſame Land being in the Defendants hand, may be granted upon the *Decree*.

Where the *Decree* of the *Provinciall* counſells, or the Court of *Requeſts* or the like, are by contumacy or other meanes interrupted: there the Court of *Chancery*, upon a Bill preferred for corroboration of the *Decrees* of that Juriſdiction ſhall give remedy.

Where any cauſe comes to hearing here, which hath been formerly *Decreed* in any other of the Kings Courts of Juſtice at *Weſtminſter*, ſuch *Decree* ſhall be firſt read, and then this Court ſhall proceed to hear the reſt of the evidences on both ſides.

Decrees upon Suits brought after Judgement, ſhall containe no words to make void or weaken the Judgement: But ſhall onely correct the corrupt Conſcience of the party, and rule him to make Reſtitution, or to performe other acts, according to the equity of the cauſe.

Bill of Review.

Decrees are not to be reverſed, altered, or explained, being once enrolled, but upon Bill of *Review*.

Bill

Bill of *Review* ſhall not be admitted, except the *Decree* be firſt obeyed and performed.

No Bill of *Review* ſhall be put in, except the party that preferres it, enter into *Recognizance*, with ſureties for the ſatisfying of Coſts and Damages for the Delay, if it be found againſt him.

Reference, Report.

NO *Reference* upon a *Demurrer*, or queſtion touching the Juriſdiction of this Court, ſhall be made to the Maſters of the *Chancery*, but ſuch *Demurrer* ſhall be heard and ruled in the Court, or by the Lord *Keeper* or Lord *Chancellour* himſelfe.

For the confirming or ratifying of any *Report*, No Order ſhall be made, without day to be given by the ſpace of a Seven-night (at leaſt) to ſpeak unto it in Court.

No *Reference* ſhall be made to any Maſter of the Court, or any other Commiſſioner or Commiſſioners, to heare and determine, where the cauſe is gone ſo farre as to Examination of Witneſſes: Except it be in ſpeciall caſes of parties neere in bloud, or of extreame poverty, or by conſent:

And generally, *References* of the ſtate of the cauſe, are to be ſparingly granted; except it be by conſent of the parties.

No *Report* ſhall be reſpected in Court, which exceedeth the warrant of the Order of *reference* which leadeth it.

The

The Maſters of the Court are required, that by *Report* they doe not certifie the eſtate of the cauſe; as if they would make *Brevimes* of the Evidence on both ſides, which doth little eaſe the Court; but that they doe it with ſome opinion: Or otherwiſe, in caſe they think it too doubtfull, to give opinion therein; And thereupon they are to make ſuch ſpeciall *Certificate*, and the cauſe is to goe on to a judiciall hearing, without reſpect had to the ſame.

If both parties conſent to a *Reference* for the examination of Accompts, to make the Cauſe more ready for hearing, it may be granted. But generally, matters of Accompt, excepting in very weighty Cauſes, are not fit for the Court, but are to be prepared by *Reference*, with this proviſion nevertheleſſe: That the Cauſes come firſt to hearing, and upon the entrance into a hearing, they may receive ſome direction, and be turned over to be conſidered and prepared.

The like courſe of *Reference* is to be taken for the examination of Court Rolles, upon any Cuſtomes; and the Copies ſhall not be referred to any one Maſter, but to two Maſters at the leaſt.

No *Reference* ſhall be made of the *Inſufficiency* of any Anſwer, without the ſhewing of ſome particular points of the defects thereof, and not upon ſurmize of the *Inſufficiency* generally.

If a Complainant take exception to a Defendants Anſwer, he muſt deliver his exceptions to the

the Defendants counſell or Attourney; and if the Defendant within eight daies amend his anſwer, he is to pay no coſts; but if he do not, then a Reference is to be had to a Maſter of the Court, and if he report the Anſwer inſufficient, then the Complainant may take out two *Sub pœna's* againſt the Defendant, one for twenty ſhillings coſts, and the other to make a better anſwer.

Where a Truſt is confeſſed by the Defendants anſwer, there needeth no further hearing of the cauſe, but a *Reference* preſently to be made of the Accompts, and ſo they are to goe on to the hearing of the Accompts.

Diſmiſſion.

WHere Cauſes are diſmiſt upon full hearing, and the Diſmiſſion ſigned by the Lord *Keeper* or Lord *Chancellour*, and inrolled, ſuch Cauſes ſhall not be retained againe, neither ſhall any new Bill be admitted, except it be upon new matter, like unto the caſe of the Bill of *Review*.

In caſe of all other Diſmiſſions, which are not upon hearing of the Cauſe, if any new bill be brought, the Diſmiſſion is to be pleaded, and after *Reference* and *Report* of the *Contents* of both Suits, and conſideration taken of the Cauſe or cauſes of the former Diſmiſſion: the Court ſhall rule and order the Retaining or Diſmiſſion

of

of the new Bill, according to juſtice, and the nature of the Caſe.

All ſuits grounded upon wils *Nuncupative*, Leaſes *parol*, Or upon long Leaſes, that tend to the defeating of the Kings *Tenures*, Or for the eſtabliſhing of the *Perpetuities*, Or granted upon *Remainder* over unto the Crown, to defeat purchaſers, Or for *Brocage*, or Rewards to make marriages, Or for bargain at play, or Wagers for bargaines for Offices, contrary to the Statute of the ſecond of *Edward 6.* Or upon contracts for *Uſurie* or *Simony*, are regularly to be diſmiſſed upon motion, if they be the whole matter of the Bill, and there be no ſpeciall circumſtances to move the Court to allow them a Proceeding.

And all ſuites under the value of ten pounds, are regularly to be diſmiſſed.

Diſmißions are properly to be prayed and had, either upon hearing, or upon Plea unto the Bill, when the cauſe comes firſt into the Court.

But *Diſmißions* are not to be prayed after the parties have been at charge of examination of witneſſes, except it be upon ſpeciall cauſe.

If the Complainant diſcontinue proſecution, after all the Defendants have anſwered, above the ſpace of one whole Terme, the cauſe is to be diſmiſſed of courſe without motion.

But after *Replication* is put in, the cauſe is not to be diſmiſſed without motion and order of the Court: and that motion is not to be made till foure

foure Termes after the *Replication* put in, and that in caſe there have been no proceeding after the *Replication*, either by motions, references, examination of witneſſes, or the like.

For double vexation, the cauſe may be diſmiſſed.

Where cauſes are removed by ſpeciall *Certiorare*, upon a Bill containing matter of equity, the Complainant is upon receipt of his Writ, to put in Bond to prove his ſuggeſtions within fourteen daies after the receipt, which if he do not prove, then upon certificate from either of the Examiners, preſented to the Lord *Keeper* or Lord *Chancellour*, the cauſe ſhall be diſmiſt with coſts, and a *Procedendo* ſhall be granted.

Demurrer.

Demurrers and *Pleas* which tend to the diſcharging of any ſuite, ſhall be heard firſt upon every day of Orders, that the Subject may know, whether hee ſhall need to give further attendance or no.

A *Demurrer* is properly upon matter *deffective* contained in the Bill it ſelfe: or foraigne matter.

But a *Plea* is of foraigne matter, to diſcarge or ſtay the ſuite. (as)

That the cauſe hath been formerly diſmiſt.

That the Complainant is out-lawed.

That the Complainant is excommunicate.

That there is another Bill depending for the ſame cauſe.

Or the like.

And ſuch *Plea* may be put in without Oath, in caſe where the matter of *Plea* appeares upon *Record*, but if it be any thing which doth not appeare upon *Record*, then the *Plea* muſt be put in upon Oath.

No Outlary ſhall be allowed, without pleading the *Record ſub pede Sigilli*: Nor plea of Excommunication without the Seale of the Ordinary.

Where any ſuite appeareth upon the Bill to be of the nature of any of thoſe which are regularly to be diſmiſſed, according to the Order before mentioned, the ſaid Order is to be ſet forth by way of *Demurrer*.

Anſwer.

WHere an Anſwer ſhall be certified to be ſufficient, the Defendant is to pay coſts.

And if a ſecond Anſwer be returned inſufficient in the points before certified for inſufficient, then he ſhall pay double coſts.

And upon the third like caſe, treble coſts.

And upon the fourth, quadruple coſts, and then to be committed alſo till he ſhall have made a perfect and ſufficient Anſwer, and he ſhall be examined upon *Interrogatories*, touching the points *defective* in his Anſwer.

But

But if any Anſwer be certified to be ſufficient, then the Complainant is to pay coſts.

No *Inſufficiency* of Anſwer can be taken hold of, after *Replication* put in, becauſe it is admitted for *ſufficient* by the *Replication.*

An Anſwer to a matter charged as the Defendants owne fact, muſt be direct, without ſaying, that *It is to his remembrance*, or *as he beleeveth*, if it be laid down to be done within ſeven yeares before.

And if the Defendant doe deny the Fact, then hee muſt traverſe it directly, and not by way of *Negative pregnant.*

As if a fact be laid to be done with diverſe circumſtances, the Defendant may not traverſe it *literally*, as it is laid in the Bill: But he muſt traverſe the point of ſubſtance.

So as if hee be charged with the receipt of an hundred pounds, he muſt traverſe that hee hath not received an hundred pounds, or any part thereof. And if hee have received any part of it, he muſt ſet down what part he hath received.

If a Hearing be prayed upon Bill and Anſwer: the Anſwer muſt be admitted to be true in all points.

And a *Decree* ought not to be made, but upon hearing of the Anſwer read in Court.

Where no Counſell appeares for the Defendant at the hearing, and the Proceſſe appeares to have been ſerved, the Anſwer of ſuch Defendant is to be read in Court.

No new matter is to be contained in any Replication, except it be to avoid matter ſet forth in the Defendants Anſwer.

Other things promiſcuouſly laid together.

ALL Copies in *Chancery* ſhall contain fifteen lines in every ſheet thereof written orderly, and unwaſtefully, unto which ſhall be ſubſcribed the name of the principall Clerk of the Office where it is written, or his Deputies name, for whom hee will anſwer. For which only *Subſcription*, no Fee at all ſhall be taken.

Commiſſions for examination of witneſſes are made according as the parties or their Attournies or Solicitors agree, either upon Interrogatories included in the Commiſſion, or to be miniſtred or delivered to the Commiſſioners at the execution of the Commiſſion. And no returne of Depoſitions into this Court ſhall be received, but ſuch onely as ſhall be either compriſed in one Roll, ſubſcribed with the names of the Commiſſioners, or elſe in divers Rolles, whereof each one ſhall be ſo ſubſcribed, as alſo the Interrogatories.

If both parties agree in a Commiſſon, and upon warning given, the Defendant bringeth his Commiſſioners, but produceth no witneſſe, nor miniſters Interrogatories, but afterwards ſeekes a new Commiſſion, the ſame ſhall not be granted: And the reaſon is, becauſe that the Defendants Com-

Commiſſioners ſitting with the Complainants Commiſſioners, and hearing what the Complainants witneſſes depoſe, and the ſcope of the Complainants Interrogatories, the Defendant may frame croſſe Articles, and draw the witneſſes into perjury or the like inconveniency. Yet ſometimes upon Oath made, that though the Defendant produced not his Interrogatories, yet he will examine his witneſſes upon no other Interrogatories then thoſe he had ready drawne before the Commiſſion was ſat on, and have not been altered, the Defendant is admitted to examine.

The Defendant is not to be examined upon Interrogatories, except it be in very ſpeciall caſes, by expreſſe order of the Court, to ſift out ſome fraud or practiſe, pregnantly appearing to the Court: Or otherwiſe upon offer of the Complainant, to be concluded by the Anſwer of the Defendant, without any liberty farther to diſprove ſuch anſwer, or to impeach him afterwards of Perjury.

Decrees made in other Courts, may be read upon hearing, by ſpeciall order.

No Depoſitions taken in any other Court, are to be read, but by ſpeciall order.

Regularly the Court graunteth no Order for reading of foreigne Depoſitions, except it be between the ſame parties, and upon the ſame Title or cauſe of ſuite.

No examination is to be had of the credit of any

any witneſſe; but by ſpeciall order, which is likewiſe ſparingly to be granted.

Where it ſhall appeare the Complainant had not cauſe of ſuit, he ſhall pay to the Defendant his utmoſt coſts to be aſſeſſed by the Court.

If any Bill, Anſwer, Replication, or Rejoynder ſhall be found of an immoderate length, both the party who put it in; and his Counſell under whoſe hand it paſt, ſhall be fined by the Court.

If there be contained in a Bill, Anſwer, or other pleading, or any Interrogatory, any matter libellous, or ſlanderous againſt any perſon that is not party to the ſuite, or againſt ſuch as are parties to the ſuite upon matter impertinent, or in derogation of the ſettled Authority of any of his Majeſties Courts; ſuch Bills, Anſwers, Pleadings, or Interrogatories, ſhall be taken off the file, and ſuppreſt, and the parties ſhall be ſeverely puniſhed by commitment, ignominie, or paying ſuch Coſts as the Court ſhall appoint upon motion, for ſuch his abuſe of the Court and party. And the Counſellers at Law who ſhall ſet their hands to the ſame Bills, Anſwers, Pleadings, or Interrogatories, ſhall likewiſe receive reproof, or puniſhment, if cauſe be.

No *Scire facias* ſhall be awarded upon *Recognizances* not enrolled, nor upon *Recognizances* enrolled, unleſſe it be upon examination of the *Record* with the Writ.

No *Recognizances* ſhall be enrolled after the yeare, except it be upon ſpeciall Order of the

Lord

Lord *Keeper*, or Lord *Chancellour* being.

No Writ of *Ne exeat Regna*, *Prohibition*, *Conſultation*, *Statute of Northampton*; *Certiorare* ſpeciall, or *Procedendo* ſpeciall, or *Certiorare*, or *Procedendo* generall, more then once in the ſame cauſe; nor *Habeas Corpus*, or *Corpus cum cauſa*, *De vi laicâ amovendâ*, or *Reſtitution* thereupon, or *De Coronatore & viridareo eligendo*, *De homone replegiando*, *Aſſiſtas* ſpeciall, *De bellino amovendo*, *Certiorares ſuper præſentationibus falſis coram Commiſſionar' Sewars*, or *Ad quod dammum*, ſhall paſſe without warrant under the hand of the Lord *Keeper* or Lord *Chancellour*, being ſigned by one of them, excepting onely ſuch Writs of *Ad quod dammum*, as ſhall be ſigned by his Majeſties Attourney generall.

Writs of Priviledge would be reduced to a good and fitting rule, for number of perſons priviledged, and the caſe of Priviledge.

The number would be ſet down by *Schedule*.

For the caſe, it is to be underſtood, that beſides the perſons priviledged as *Attendants* upon the Court; Suitors and Witneſſes are onely to have priviledge *eundo*, *redeundo*, and *morando*, for their neceſſary attendance, and not otherwiſe. And that ſuch Writs of Priviledge doe only diſcharge an Arreſt upon the firſt Proceſſe.

And yet where the party is taken in execution at time of neceſſary attendance here required, it is to be taken as a contempt to this Court, and accordingly to be puniſhed.

No

No *Supplicavit* for the *Good behaviour* ſhall be granted, but upon Articles grounded upon Oath at leaſt, or upon a Certificate of any one Juſtice of Aſſize, or two Juſtices of the Peace, with oath that it is their hands; or it may be granted by order of the *Starre-Chamber*, or *Chancery*, or other of the Kings Courts.

No *Recognizance* of the *good behaviour* and the *Peace* taken in the Country, and certified into the *Petty-Bagge*, ſhall be filed within the yeare, without ſpeciall Warrant.

Writs of *Ne exeat Regna*, are properly to be granted, according to the ſuggeſtion of the writ; in reſpect of Attempts prejudiciall to the King and State: in which caſes the Lord *Keeper*, or Lord *Chancellour* will grant them, upon the prayer of any the principall Secretaries, without cauſe ſhewing; or upon ſuch information his Lordſhip ſhall think to be of weight.

But otherwiſe alſo they may be granted accotding to the ancient practice uſed in the caſe of *Interlopers* in Trade, Great *Bankrupts*, in whoſe eſtate many Subjects are intereſſed; or in other caſes that concerne multitudes of the Kings ſubjects, and alſo in caſe of *Duels*, and ſome other caſes.

If a man be indebted to any perſon, and being ſo indebted intends to goe beyond ſea; the party to whom he is indebted, having a ſuite for the ſame depending, may upon motion or Petition to the Lord *Keeper*, have a *Ne exeat Regna*.

All

All Writs, Certificates, and whatſoever other *Proceſſe* returnable *Coram Regi in Cancellaria*, ſhall be brought into the Chappell of the *Rolles*, within convenient time after the Returne thereof: and ſhall be there filed upon their proper files and bundles as they ought to be, and as the practice hath been heretofore, except only the depoſitions of the Witneſſes, which may remaine with any of the ſix Clerks, by the ſpace of one yeare next after the cauſe in Court ſhall be either determined by Decree, or otherwiſe diſmiſt.

All *Injunctions* with their Tranſcripts ſhall be likewiſe enrolled, as heretofore was uſed.

All dayes given by the Court to Sheriffes to returne their Writs, or to bring in their Priſoners upon Writs of priviledge, or otherwiſe between party and party unpriviledged, ſhall be entred eitheither in the *Regiſters* Office, or in the *Petty-Bagge* reſpectively.

And all Recognizances taken to the Kings uſe, or unto the Courts, ſhall be enrolled in convenient time with the Clerk of the Enrollement, and calenders ſhall be made of them, and the ſaid calenders ſhall be preſented every Michaelmas Terme to the Lord *Keeper*, or Lord *Chancellour* being.

In caſe of ſuites upon the *Commiſſion* for *Charitable uſes* to avoide charge, there ſhall need no Bill, but onely exceptions unto the *Decree*: and Anſwer is to be made forthwith thereunto and thereupon: and thereto the Exceptant may reply

and examine his witneſſes, and ſo the cauſe goe on to hearing before the Lord *Keeper*.

Upon ſuite for a *Commiſſion* of *Sewers*, the names of thoſe that are deſired to be Commiſſioners, are to be preſented to the Lord *Keeper*, or L. *Chancellour* in writing, and then his Lord^p. will ſend their names to ſome Privy Counſellor, or the Lievtenant of the County, or ſome Juſtice of Aſſize, reſiding in thoſe parts for which the Commiſſion is prayed; to conſider of them, that they be not put in for private ends: and upon the returne of ſuch opinion, his Lordſhip will give farther order for the Commiſſion to paſſe.

No new Commiſſion for *Sewers* ſhall be granted while the firſt is in force, except it be upon diſcovery of abuſe or fault in the firſt Commiſſioners, or otherwiſe upon ſome great and weighty ground.

No Commiſſion of *Bankrupts* ſhall be granted but upon *Petition* made to the Lord *Keeper*, or Lord *Chancellour*, and the names of thoſe that are deſired for Commiſſioners ſhall be preſented therewithall: Of which his Lordſhip will take conſideration, and alwaies joyne ſome perſons learned in the Law, with the reſt that ſhall be allowed; yet ſo as care be taken, that the ſame perſons allowed, be not too often uſed in ſuch Commiſſions, and likewiſe that Bond be given with good Sureties, of the penalty of 200. l. at leaſt, to prove the party againſt whom the Commiſſion is ſued forth to be a Bankrupt.

No

No Commiſſion of *Delegates*, in any caſe of weight ſhall be awarded, but upon *Petition* preferred to the Lord *Keeper*, or Lord *Chancellour*, who will name the Commiſſioners himſelfe; to the end, that they may be perſons of fitting quality, having regard to the weight of the Cauſe, and the dignity of the Court from whence the *Appeale* is.

Any man ſhall be admitted to defend in *forma pauperis* upon Oath.

But the Complainants are ordinarily to be referred to the Court of *Requeſts*.

Or to the *Provinciall* Councells, if the caſe ariſe in their Juriſdictions.

Or to ſome Gentlemen in the Country, except it be in ſome ſpeciall caſes of commiſeration, or *potency* of the adverſe party.

Suites after Judgement muſt be brought according to his Majeſties Order being upon *Record*.

Licences to collect for loſſes by fire or by water, are not to be granted but upon good Certificate, and they are rarely to be renued: and they are ever to be directed unto the County where the loſſe did ariſe, if it were by fire, and the Counties adjoyning unto it as the caſe ſhall require: And if it were by ſea, then unto the County where the Port is from whence the ſhip went, and to ſome Counties adjoyning.

No exemplification ſhall be made of any Letters Patents *inter alia*, with omiſſion of the gene-

rall words; nor of records made void or cancelled; nor of the *Decrees* of this Court not enrolled; nor of *Depoſitions* by parcels or fractions omitting the reſidue of the ſaid *Depoſitions*; nor of *Depoſitions* in Court, to which the hand of the Examiner is not ſubſcribed; nor of Records of the Court, not enrolled nor filed, nor of Records of any other Court, before the ſame be duly certified to this Court, and orderly filed here; nor of any Record, upon ſight and examination of any Copy in Paper, but upon ſight and examination of the Originall.

I will withall ſet downe the very words with which the Authour concludes theſe laſt recited Orders, becauſe you may accordingly give them extent dimention and valuation.

The words are theſe, (viz.)

BEcauſe Time and Experience may diſcover ſome of theſe Rules to be inconvenient, and ſome other fit to be added hereunto; therefore his Lordſhip intendeth in every ſuch caſe, from time to time to publiſh ſuch *Revocations* or *Additions*, as they ſhall offer themſelves.

Howſoever I take it, there is not much alteration had in them; it may be there is ſome addition: But for the *Rolles* ſide (as unto the making of *Decrees*, and granting of *Injunctions*) which was heretofore exerciſed alike there, as in Court, or

on

on the Lord *Keepers* ſide (which I conceive grew by the connexing of the Lord *Keepers* Office, and Maſter of the *Rolles* in the ſame perſon) I cannot ſay how the caſe ſtands at this preſent, having withdrawn my ſelfe now theſe ſeven yeares paſt from any practice in the Lawes in any kind.

Ordinances made by the Right honourable Thomas *Lord* Coventry, *Lord Keeper of the great Seale of* England, *with the advice and aſſiſtance of the Right honourable Sir* Julius Ceſar *Knight, Maſter of the* Rolles *in the Terme of S*t Michael *the Archangel, in the eleventh yeare of the Reigne of our Soveraigne Lord King* CHARLES, *for the redreſſe of ſundry Errours, Defaults, and Abuſes, in the High Court of* Chancery.

THat Bills, Anſwers, Replications, and Rejoynders be not ſtuffed with Repetitions of Deeds or Writings *in hac verba*; but the effect and ſubſtance of ſo much of them onely as is pertinent and materiall to be ſet down, and that in effectuall and brief termes. That long and needleſſe traverſes of points not traverſable, nor materiall cauſes, recitals, tautologies, and multiplications of words, and all other impertinences (occaſioning needleſſe prolixity) be avoided, and the ancient brevity and ſuccinctneſſe in Bills and other pleadings reſtored; and upon any default herein the party and Counſell under whoſe hand it paſſeth, ſhall pay the charge of the Copy, and

Againſt the unneceſſary length of bills, anſwers, &c.

and be further punished as the case shall merit.

Touching brevity of Replications, and Examinations.

When the Defendants have answered, the Complainants and their Counsel are seriously to advise of the Answer; and if they find that upon the Answer alone, without further proof, there be sufficient ground for an Order or Decree, to proceed upon the Answer, without further lengthening of the cause; or if it be needfull, to prove one or a few particular points, to reply unto those points, and not to draw into pleading or proofes any more then those necessary points, thereby making long Bookes, and putting both sides to unnecessary charges; the Defaulters herein to be punished by paying the charge of the Copies, or otherwise as the Case shall require.

Against impertinent length of Interrogatories.

That Interrogatories for examining of witnesses be drawn onely upon points materiall, and not upon matters which are either confessed in the pleading, or are impertinent or needlesse to be proved, That the Articles that are usually thrust into the beginning of every schedule of Interrogatories, as it were of form or course, touching the witnesses knowledge of parties Complainants and Defendants, of the lands, townes, and places in the pleadings and the like, be not so needlesly used as they are: But if for crosse examining of any witnes, or for other speciall reason, it shall be necessary to minister any such question; every man is left at liberty to doe therein as much as shall be pertinent and needfull in a due and fitting place: and if any shall offend against this, the party,

and

and ſuch as drew the Interrogatories ſhall be puniſhed by paying as much as the other ſide is by that meanes overcharged in Copies, and further as the caſe ſhall merit.

When the parties are at iſſue, and doe proceed to examination of witneſſes either in Court or by Commiſſion, as the Interrogatories are to be pertinent and materiall, ſo the witneſſes are to be ſorted by thoſe that produce them, that they may be examined upon ſuch Interrogatories as are proper and fit for them, and not to examine a multitude of witneſſes upon a multitude of queſtions altogether unknown to them, as it is too frequently done, upon pain that where any groſſe abuſe or default herein ſhall be made appeare to the Court, the Defaulter ſhall pay as much as the other ſide is by that meanes overcharged in Copies, and ſhall be puniſhed further if the Court ſee cauſe.

Againſt examination of witneſſes upon ſuch interrogatories as they cannot materially anſwer.

When a Commiſſion is awarded to examine witneſſes, if by the default of him that had the carriage of the Commiſſion or his Commiſſioners, nothing is done, he ſhall bear all the charges that the other ſide was put unto about that commiſſion, either for fees of Court, bringing or entertaining Commiſſioners, or Witneſſes, or otherwiſe, to be aſcertained by the Oath of the party, or of him that diſburſed the money for him, and ſhall renew the commiſsion at his own charge.

When default is made of executing a Commiſſion, the defaulter is to beare all the charge of the contrary part.

When a commiſsion is awarded to examine wit-

When a Commiſſion is renewed by one party, the other party hath examined all his witneſſes, he that renewеth is to beare all the charge of the other.

witneſſes, and the one ſide produceth and examineth all his witneſſes, and the other doth not, but prayeth a new commiſsion; if it be granted, hee ſhall beare all the charge of the renewed commiſsion both in Court and Country, as well for the charge and entertainment of his own Commiſsioners, as the Commiſsioners of the other ſide; and the other ſide ſhall be permitted to croſſe-examine the witneſſes produced by him that reneweth the commiſsion: but if he will examine any more witneſſes of his owne, then hee ſhall beare his own part of this charge. The charges herein mentioned to be aſcertained by the Oath of the party or of him that diſburſed the money for him.

Hee that renewes a Commiſsion once executed, &c. muſt thereby examine all his witneſſes or elſe in the next Terme at his perill.

He at whoſe inſtance a commiſsion to examine witneſſes after a former commiſsion executed and retorned is once renewed, and he by whoſe default, or by default of his Commiſsioners a former commiſsion was not executed, and thereupon it is renewed, ſhall at his perill examine all his witneſſes by that renewed commiſsion, or examine them in Court by the end of the Term, wherein that renewed commiſsion is returnable without any more or further delayes.

Touching witneſſes examined in Court.

When witneſſes are examined in Court upon a ſchedule of Interrogatories, there ſhall no new Interrogatories be put in to examine the ſame witneſſes, but the witneſſes ſhall be examined onely upon ſuch Interrogatories as were exhibited before the witneſſes to be examined were ſworn.

ſworn, neither ſhall any witneſſes be examined in Court after the day of publication though they were ſworn before, ſo that a copie of the rule of publication be delivered to the examiner whereby he may take knowledge of the publication.

When Witneſſes are examined in Court, they ſhall perfect and ſubſcribe their depoſitions unto ſuch Interrogatories as they have anſwered before they depart from the Examiner or his Deputy, and ſhall not be permitted to make any alteration thereof at any time after without leave of the Court, unleſſe it be in circumſtance of time or the like, or for making perfect of a ſumme upon a view of any deed, booke, or writing, which the Witneſſe ſhall ſhew to the Examiner before he admit of ſuch alteration.

The Sixe Clerkes who are the onely Attourneyes in this Court ought to informe themſelves continually of the eſtate and proceedings of their Clients cauſe, whereby they may be able to defend their Clients and to give account to the Court as the Attourneyes in all other Courts do, and not to leave the care and knowledge thereof upon their under-Clerkes who attend not in Court, and the Clients and ſuch as follow their cauſes are to acquaint their Attournies for that purpoſe.

The 6. Clerks are to informe themſelves of their Clients Cauſes.

Such as deſire to have their cauſes ſet down for hearing, muſt repaire to the ſix Clerk that is Attourney in the cauſe, at leaſt ſix dayes before the end of the Terme, that the ſix Clerk may informe

Touching the 6. Clerks preferring of cauſes for hearing.

form himſelf of the ſtate of the cauſe, of the long or ſhort dependance thereof in Court, of the antiquity of publication, of the weight or value of the cauſe, and all other circumſtances materiall to informe the Lord *Keeper*, or Maſter of the *Rolles* at the time of ſetting down of the cauſes, and the ſix Clerk may not refuſe to offer the ſame to be ſet down, if he be attended in ſuch due time as aforeſaid, nor come unprepared to inform the L. *Keeper* or Maſter of the *Rolles* of the nature and circumſtance of the cauſe as aforeſaid, and neither he or any of his Under-Clerks nor any other, are to take any fee, gratuity or reward for the ſame.

Touching the drawing up of orders, &c. by the Regiſter.

The Regiſter in drawing up Orders, ſhall uſe all convenient brevity according to the manner of ancient times; they ſhall mention the materiall Reports, *Affidavits* and former Orders, upon which any new order is grounded to have been read, but ſhall not repeat them: They ſhall not (unleſſe it be by ſpeciall direction of the Court) fill any order with the diſputes of Councell nor with Reaſons and Allegations *pro* and *con*, nor mention any reaſons but ſuch on which the Court relied in making the order, and thoſe with brevity and cleernes; and if they deliver a draught or copy of any Order to be peruſed by counſell, if it be not brought within twenty foure houres, they ſhall enter the Order without attending any longer for an anſwer from Counſell, onely they ſhall forbeare the entry of Decrees and diſmiſſions untill they be ſigned, that the Lord *Keeper* and

and Maſter of the *Rolles* may reforme them, if there be cauſe, at the Signing.

Touching Writs of execution of Decrees.

Whereas the exceſſive and unneceſſary length and charge of writs *de Executione Decreti* have been complained of, from henceforth (unleſs the Party that ſueth out ſuch writ ſhall deſire that the whole decree, as it is ſigned and inrolled, be therein recited) the writ if it be onely for payment of mony ſhall make no other recitall but to this or the like effect,

Cum per quoddam Decret' in Cur' Cancellar' noſtr' die Anno Regni noſtri ordinatum & adjudicatum exiſtit quod firmit' injungend' mandamus quod tu ſolvas A.B. Cen' li' *legalis monetæ Angliæ, Tibi præcipimus & firmit' injungen' mandamus quod prædic'* Cent' li. *præfat'* A.B. *debita modo ſolvas, & hoc nullatenus omittas periculo incumben'.*

And if the money by the decree be payable at certaine daies or places, then the ſame daies or places to be expreſſed in the writ without any further recitall: And if the decree be for doing other things to be performed by the party or parties to whom the ſaid writ is directed; then no more ſhall be recited in the writ, but the very decretall order, unleſſe the decretall order doe, in ſuch manner referre to the report or certificate as without the recitall of thoſe points of the report or certificate which are to be performed by the parties to whom the ſaid writ is di-

rected, it will not appeare what is to be by them performed, and in that caſe, ſo much of the report, or Certificate as is to be performed by the ſaid parties ſhalbe recited and the order concerning the ſame, and no more, unleſſe it be deſired by the party ſuing out the ſaid writ, and the Fee thereof to be paid ſhall be after the rate preſcribed in the Table of Fees and no more.

Touching Demurrers.

Every Demurrer ſhall containe the cauſes of the Demurrer, and the counſell that ſet their hands to it are to beware that theſe cauſes be not triviall, and where a Demurrer or Plea is grounded upon the ſubſtance and the body of the matter, it ſhall be determined in open Court without reference, and the Regiſter at the inſtance of the party Demurring ſhall without any Fee put it in the paper of cauſes after the hearings, aſſigning a ſpeedy day to every one in order as he cometh to require it: And if the Defendant who demurred make no ſuch inſtance to the Regiſter within eight daies after the Plea and Demurrer is put in Court, the ſame without any motion ſhall be diſallowed of courſe, as put in for delay, and the Defendant ſhall pay ordinary coſts; provided that the Regiſter doe not without ſpeciall warrant put above two of thoſe Demurrers into the paper upon one day.

More touching Demurrers.

If the Demurrer be grounded onely upon ſome error, ſlip or miſtaking in the Bill, no reference ſhall be made thereof for a weeke after it comes

omes in, but the Complainant without any motion ſhall be permitted of courſe to amend the ſaid error, ſlip or miſtaking, paying to the Defendant or his Attourney to his uſe, coſts as the ſixe Clerkes not towards the cauſe ſhall thinke fit; But if the Complaynant in that time doe not amend or alter it, then if the Defendant doth nothing therein within a weeke following by getting it ruled or referred, it ſhall be diſallowed of courſe without any motion, as put in for delay, and the Defendant ſhall pay ordinary coſts: but if the Defendant not amending it as afore-ſaid, it be ruled againſt him upon reference or otherwiſe, he ſhall pay the ordinary coſts.

When a Plaintiffe excepteth to a Defendants Anſwer he ſhall ſet downe his exceptions in writing and deliver it to the Counſell, whoſe hand is to the Anſwer, or to the Defendants Attourney in Court, and if the Defendant doe within a weeke ſatisfie the Plaintiffe of the invalidity of his exceptions, or amend the Anſwer in the ſame time, or agree with the Plaintiffe, or his Attourney, or Solicitour, to amend it by ſuch a time as ſhall be agreed upon between them, and doe amend it accordingly, without putting the Plaintiffe to obtain a Reference, or make any motion there-abouts, then the Defendant ſhall pay no coſts: And if any Plaintiffe ſhall preſſe or procure a Reference within this time, or before this courſe taken, the Reference ſhall be void as obtained

Touching inſufficient Anſwers, &c.

and

tained ſurreptitiouſly; but if the Defendant do neither ſatisfie the Plaintiffe, nor amend his anſwer in manner aforeſaid, then if upon reference or otherwiſe his anſwer be ruled inſufficient, he ſhall pay coſts according to the courſe of the Court.

The Maſter of the Court ſhall prefixe convenient but not over-long daies for hearing ſuch matters as are referred to them, and at the time prefixed ſhall proceed without admitting any fained or dilatory excuſes; eſpecially that counſell are otherwiſe imploied, or cannot attend, or are not inſtructed, (there having been notice and time enough allowed) or the like: And after the daies, ſhall ſpeedily ſend in their reports for the eaſe of the Clients attendance which cannot but draw great charge.

If the caſe be ſuch as the Maſter cannot proceed in the abſence of either Party or his Counſell without juſt cauſe abſenting; the Maſter is preſently to certify the Court of the default, that the defaulters may be puniſhed by commitment, coſts, or otherwiſe as the caſe ſhall merit; and if the Maſter doe uſe or willingly admit any groſſe delay, the Reference is to be removed, and the Maſter rebuked by the Court.

The Maſters of the Court are not (upon the importunity of Counſels or Clients) to make ſpeciall certificates of matters wherein the Court expects an opinion from them, nor are to doe it but

but where their own judgements in reſpect of difficulty leadeth them to it, it occaſioning for the moſt part a needleſſe trouble to the Court, and both delay and expence to the party.

No Reference ſhall be made to a Maſter whether an injunction ſhall be granted or not, but the ſame to paſſe upon the opinion and judgment of the Court. But if the Court thinke the matter informed ſufficient for an injunction, but is doubtfull of the truth of any point of the information, the Court when it cannot otherwiſe be fitly done may be certified thereof by a Maſter who is to certifie not only whether the information be in ſubſtance true, but if there appeare other matters to confeſſe and avoid or otherwiſe ballance that Information, he muſt not reconcile it but give the Court a cleare and true information.

No References ſhall be made either to Maſters, or others, unleſſe that be by aſſent on both ſides to hear and determine the cauſe upon all the proofes or otherwiſe, but when the Court hath heard it, and reduc'd it to particular points, ſpecially if thoſe points have relation to accounts or matters of that nature, the Court may fitly leave ſuch to be reduced to certainty by a Maſter.

The Regiſter ſhall within ten daies after the end of every Terme certify to the Lord *Keeper* what References depend in the hand of any Maſter

ſter, and how long they have depended, that if any of them have depended overlong, the Court may require an account thereof from the Maſter and quicken him to a ſpeedy diſpatch.

When a Maſter certifieth the ſufficiency or inſufficiency of an anſwer, Plea, or demurrer, if either party reſt not in the report but trouble the Court to determine it, if the Maſters report be confirmed, he that oppoſeth it ſhall pay double coſts.

Where the Maſters of the Court doe ſometimes by way of inducement fill a leafe or two of the beginnings of their reports and ſometimes more, with a long and particular recitall of the ſeverall points of the orders of reference, they ſhall forbeare ſuch iterations the ſame appearing ſufficiently in the orders, and without any other repetition then thus, according to an order, or by diſcretion of an order of ſuch a date, ſhall fall directly into the matter of their Report, ſetting downe the ſame cleerely but as briefly as they can for the eaſe both of the Court and of the partyes.

That Counſellours be carefull what motion they make, and eſpecially that they move not for the things that may be had of courſe without motion, nor for ſuch things as cannot be granted as being againſt the conſtant rules of the Court, or common juſtice, nor yet for ſuch things as being graunted ſerve to little or no purpoſe,

poſe, and before they move the Court they be ſure to be well informed and inſtructed, leſt if the orders obtained by them upon information be after avoided, their Clients or themſelves be deſervedly puniſhed with coſts or otherwiſe.

When orders be made eſpecially if it be upon hearing of counſell on both ſides or after day given to ſhew cauſe, and none ſhewed, there being a timely notice, both ſides are to reſt in it without troubling the Court with new motions to croſſe it, unleſſe the counſellour that moves it be ſure that the matter he hath to croſſe it, be weighty and important and will be well proved upon the motion: ſuch as ſhall do the contrary are to be puniſhed with goods, coſts, and otherwiſe as the court ſhall finde cauſe.

That no cuonſellor put his hand to a Bill, Anſwer, or other pleadings, unleſſe that be drawn by himſelf, or at leaſt peruſed by himſelf in the paper draught before it be ingroſſed; and that the counſellor that puts his hand to any ſuch ſhall be anſwerable for all things therein either againſt theſe orders or any other the orders and rules of this court, except only ſuch things as are not to be miſliked, but for untruth of which the Client if he informed it, or ſuch as cauſed it to be put in without his warrant or information, ſhall be anſwerable.

If any counſellor ſhall preſume to move for one *in Forma Pauperis* that is not ſo admitted, and

ſhall under that pretence move a ſecond motion, the Regiſter ſhall enter neither of his orders but ſhall within foure dayes acquaint the Lord *Keeper* or Maſter of the *Rolles* with the abuſe, that he that did it, may be condignely puniſhed.

Counſellours, before they take on them to informe by motion or otherwiſe, that any thing is contained in the Bill, Anſwers, pleadings, proofes publiſhed or in any deedes or records, ought to be carefull in peruſing the ſame themſelves and not to reſt upon the information of the Client or his Solicitour who cannot ſo well judge of them, and whoſe part it is to produce thoſe things to the Counſellour, but it is the Counſellours part to direct how farre forth the ſame is to be preſſed or urged to the Court, and they are to ſuſtaine the blame or puniſhment if either wittingly or negligently for want of reading or purſuing, they abuſe the Court therein.

For avoiding a multitude of idle petitions drawn by perſons altogether ignorant of the orders and courſe of the Court, or the true ſtate of the Petitioners buſineſſe, that Petitions before they be preſented to the Lord *Keeper* or Maſter of the *Rolles* be ſhewed to that fixe Clearke who is the Petitioners Attourney in Court or to his Deputy, and by him approved and ſubſcribed, for which no Fee ſhalbe taken: and this is not to be underſtood of Petitions adviſed and ſigned by counſell, nor of Petitions containing any mat-

ter

ter of complaint against the Attorney or his Under-clerkes.

All the Clerks of this Court in copying, ingrossing, inrolling or other writing shall do the same fairely, orderly and Clerklike, not doing it wastefully, nor in lesse skinnes or rolles of parchment or leaves of paper then ought to be, thereby increasing their own and their Mastres profits or the Subjects charge: and if the Master of the Office upon complaint to him do not doe right therein, the Lord *Keeper* or the Master of the *Rolles* shall punish both the Master and the Clerk, and yeeld recompence to the Complainant, upon complaint made to either of them within two Termes after the offence done.

And because the Confirmation of Ordinances and by-Lawes, made for the better government of Societies Incorporate, doe for the most part passe through the hands of the Lord Keeper, *or Lord* Chancellour *for the time being, according to the Statute of the nineteenth of K. Henry 7. Therefore, and for that it is onely the path of a very few travelling in the Lawes, I thinke good to write according to mine own Practise therein (as followeth.)*

IF a Corporation be newly erected, and is to have also Ordinances *de novo*, made for the better government of their Company, or Body: they must first make a perfect draught of them

by advice of counſail in a Paper-booke.

Your counſail ſhould be both learned in the Lawes of the Land, the Prerogative of the King, the Subjects right, and the Priviledges, Powers and Cuſtomes of the great body the City, or Towne corporate, wherein you are ſubincorporated as Brethren of a Trade, myſtery, or occupation.

For any Ordinances made either againſt the Lawes of the Land, or the Prerogative, are not onely void in themſelves, but farther puniſhable in thoſe who execute them, notwithſtanding any confirmation whatſoever. And therefore commonly in all Patents and Charters of Incorporation, there is a ſpeciall clauſe of *proviſo* in this point and to this purpoſe.

And I doe herein indigite at two manner of Ordinances, under which the commonalties of Corporation do much grone and complain their preſſures.

The one is a preſumption and intruſion upon the Birth-right of a free born Subject, (*viz.*) the Impriſonment of their Bodyes, for breach of an Ordinance of their company (a thing moſt unlawfull, and unreaſonable, and yet too frequently practiſed by too many of them.) For colour whereof, I have ſeen a Warrant *Dormant* lying in the Halls of ſome Companies, under which they ſubſcribe the names of whom they liſt to commit, and then deliver him to an Officer,

Officer, who attends them at their Court for the purpoſe, and ſo it is not pretended to be their owne act, but the will and commandement of a greater Magiſtrate.

Or an Intruſion upon the Subjects Birth-right, by denying him to ſeeke Law and Juſtice before the King, the Fountain of Juſtice, at his Court at *Weſtminſter*.

Or to ſet up and uſe his Trade, after he hath arrived at his Freedome by honeſt ſervice, according to the Lawes of the Land, and the ancient cuſtome of the place.

Or to take a Houſe for his beſt convenience, advantage and accommodation of his Trade:

Or the like.

The other Aggrievance which I point at, is a conſumption and effuſion of the Purſe and eſtate of the Subject, by grievous Fines, Amerciaments and Impoſitions, and by laying of Offices upon them, which draw great expence, in Feaſting and profuſeneſſe; of which I ſhall take occaſion in a more fitting place, to ſpeake and write at more liberty.

I proceed with my Direction in the paſſing of any ſuch Ordinances.

The Paper-book being perfected by ſuch able Counſell, you are to draw your petition in the names of the Maſter and Wardens, in name, and in the behalfe of the whole Company, to bee directed and delivered with the ſaid Booke

to

to the Lord *Keeper* or Lord *Chancellor*, defiring; Whereas it hath pleaſed his Majeſty ſo to incorporate you, and to give you power to make Orders and Conſtitutions for your better government; which Orders are by the Statute of the nineteenth of King *Henry* 7. to be peruſed, examined, and allowed, by the Lord *Keeper*, Lord *Treaſurer*, and the two Lords chiefe Juſtices of either Bench, or three of them at leaſt, which proviſion you are ready to obſerve and performe on your parts.

It may therefore pleaſe his Lordſhip to give order to the two Lords chiefe Juſtices to peruſe, examine, and make the ſame fit and worthy the confirmation and allowance of his Lordſhip, and themſelves, &c.

Hereupon, his Lordſhip will give order unto your Petition: That the two Lords chiefe Juſtices doe accordingly peruſe, examine, and make them fit, as is deſired.

They the ſaid Lord chief Juſtices doe by vertue of that Order and Warrant peruſe the ſame; and after they have ſo altered, added, or ſubtracted, as they ſhall think fit:

Then their Lordſhips give order to one of their owne Clerks, to write them over faire againe into a Paper Book copy-wiſe. Which when they have exactly examined with the former, & by them reformed, they ſubſcribe the ſame, and ſend them ſealed up backe againe to the Lord *Keeper*; who upon the opening thereof, and ſight of the

the approbation of the Lords chiefe Juſtices doth likewiſe give order in writing, at the foot of the ſaid Book ſubſcribed with his hand, that the ſame be forthwith faithfully engroſſed in Parchment (and in the *Chancery* hand) by ſuch an one as it ſhall pleaſe the two Lords chiefe Juſtices to appoint thereunto. And that they give him teſtimony of the due performance thereof, by the confirmation of the ſame under their ſeverall hands and Seales, and ſo the Lord *Keeper* ſeales the Book up againe, and returnes it to the Lords chiefe Juſtices, who give direction for the engroſſement, according to the order aforeſaid.

And when the ſame is ſo engroſſed, and examined with the Paper Book, they ſet their ſeverall hands and Seales thereunto, and deliver it to your ſelves, to carry to my Lord *Keeper*. Upon ſight whereof he uſeth alſo to ſeale and ſubſcribe the ſame.

But I pity the caſe very much, that there is no Enrollment, Record, or Regiſter, of any ſuch Ordinances kept in any place, the rather for ſo many thouſands of people are governed by them, being Law, to which they can have no recourſe, nor can conſequently take the true meaſure, by which they ſhould faſhion their manners, to fit ſmoothly to the body of their Ordinance.

It is not the reading of them once in a yeare in parcells and curſorily, can take impreſſion in the moſt learned of them (if there be any ſuch) much leſſe in the generall ſort.

I

I hope that ſucceeding times will look into this evill, even in the greateſt bodies incorporate, and give it a fitting redreſſe.

And ſo much ſhall ſuffice for ſuch Ordinances.

I now returne to my other ſcattered pieces which I have gathered together, and faſciculated into the little bundle following.

Inſtruction how to ſue a Recognizance *taken in* Chancery.

IF you would ſue a *Recognizance* that is taken here:

When it is forfeited, you are to bring a copy of the ſame to one of the Clerks of the *Petty-Bagge*; and he will thereupon make you two Writs of *Scire facias*: the one of a *Returne* paſt (if you will) and the other of a *Returne* to come. Theſe you muſt deliver to the Sheriffe of *Middleſex*, who will returne them, as the Law requireth him to doe in this caſe.

And when they are returned, you are to carry them again to the *Petty-Bagge*.

And to retaine one of the Clerks there to be your Attourney herein.

And then give the Defendant a day to appear; which if he doe not accordingly, a Judgement is to be awarded againſt him for his ſaid default.

And

And if he doe appeare by the day to him so given, then are you the Plaintiffe to *Declare* against him the Defendant, and he is to answer and plead to you here, as is used in other Courts of Common Law.

And when you are at full issue upon the *Venire facias*, you are to have your witnesses, and this is the utmost extent of the proceeding here in *Chancery*.

For then if you will goe to tryall, you must have the whole proceeding there written into Parchment, and it must either be sent by the Officer of the *Petty-Bagge*, sealed up to be tryed in the *Kings Bench*, or *Common-pleas*, (at your election) or else it may be delivered over unsealed, by the Lord Keeper or Lord *Chancellor*, which is agreeable with the words, *se proceda*, &c.

Where note, that there can be no tryall by Jury here in *Chancery*.

Instruction how to sue a Statute Staple forfeited here.

IF you will have a *Statute Staple* here, You must first goe to the Clerk of the Staple, and shew him the date of your *Statute*, whom it was acknowledged, which may also appeare by the Records of the Office, and then he must make your *Certificate* thereupon, and seale it up

Then are you to goe with it to the Clerk of the Crowne, and to get him to make the *Extent* thereupon.

You must deliver to the Clerk of the Crowne your *Certificate*, you must then have your Obligation made; and your *Extent* to be made and endorsed on the backside, as is used in such cases. This endorsment of the *Extent* is called the Fine of the *Extent*, which must be delivered unto the Sheriffe; who by vertue thereof is to impannell a Jury, to enquire, extend, and apprehend as well the Body as the Lands, Goods, and Chattels of the party so bounden.

And when they be so extended into the Kings hands; the Sheriff may keep them untill you bring him a *Deliberate*, which you are to have from one of the Clerks of the Crowne office.

Note also, that it concernes you to take good heed how you sue out this *Deliberate*. For if there be not sufficient estate or goods extended, wherewith to sue your *Statute*, and you sue your *Deliberate* of these Lands and Goods, &c. extended, you shall never have more then was first extended, and delivered.

Wherefore if you doe understand or can conceive that there be more Lands or Goods, extendable in any other place elsewhere, you are to get them also to be extended, and when you have sufficient, to sue out your *Deliberate*, then you are to deliver up your *Statute*, before you have your said Writ, because otherwise the Clerke of

the *Petty-Bagge*, will make you no *Deliverie* at all.

The way how to sue forth a Writ of Supplicavit, whereby the party sued shall not be released till the party grieved please.

If first, you must take your corporall Oath before a Master of the *Chancery*, that you doe not this desire it for any malice, hatred, or envy to the party, but for your owne quietnesse and safety; whereupon you shall have a Warrant to lead your said *Supplication*, and thereupon consequently the Writ it selfe, so soone as the same may be written and sealed.

After you have the same granted, you may sue out of the *Chancery* a Writ of *Capias*, which you should use in this manner, (*viz.*) When you have delivered your *Supplication* to have a Warrant thereupon for the arresting of the person sued, and have got him likewise arrested, you must keep him safe, and give heed to and answere unto him, till the time he put in Bond for Recognisance thereupon, with Sureties (as the case requires.)

For if he take notice of it, then he will lye in prison till the time prescribed, and unto your *Supplication*, which if he doe, your Writ is

is of no force or use. Wherefore it concernes you to have care herein.

And when the party is arrested, and hath put in Sureties to the Sheriff or Justice, who granted the Warrant upon the Writ; and the party hath given Bond with Sureties; then doe you deliver your said *Certiorare* unto them that took the Bond, and thereupon they are tyed to certifie the same up accordingly.

So consequently shall he stand bounden in such manner, untill you please of your owne accord to release him.

This hath been a practise very frequent heretofore: and yet it appeareth by an especiall order made of purpose to obviate this abuse, which order I have before recited in these Collections, there was both care and provision taken for redresse and reformation in this particular case.

Instructions how to sue forth a Supersedeas *upon the former Writ of* Supplicavit, *or the like Writ.*

FOr that it cannot be known but by search and enquire for the party against whom the Writ for *Peace* or good *Behaviour* is sued forth, in what Court the same is so sued, untill he be arrested for the most part; whether it be out of the *Chancery*, or the *Kings Bench*: wherefore to avoid the evill of being bound, he may sue forth and have his

Su-

Supersedeas ever in readinesse about him, if he suspect any such practice be intended against him (as aforesaid.)

The *Supersedeas* must be sued forth thus, (*viz.*)

You shall (rather in the *Chancery*, then in the *Kings Bench* side) enter into Bond with Sureties (*quia*, with condition that you shall keep the Kings peace, or be of the good behaviour during such time as for which you shall so binde your selfe, and the occasion shall require. For if you suspect that your Adversary will onely binde you to the Peace, then a *Supersedeas* will serve only for the peace: if for the good behaviour, then your *Supersedeas* must be for the good behaviour; (if both, for both.)

When you have so bound your self with Sureties, shall in your absence be sent (or brought) upon (an Attachment, your Writ of *Supersedeas*, so shewn at the same time, shall be allowed and) a Writ of *Supersedeas* shall be sued forth and directed to the proper Clerk of the *Crowne* (or Office) which is ever kept in any Court (*Chancery*, *Kings Bench*, or *Common Pleas*) and at this instant is kept in the Court of the Queens Bench.

I doe advise you to sue forth your *Supersedeas* rather out of the *Chancery* then the *Kings Bench*, for these reasons, viz.

The Condition of your Bond in *Chancery* doth not

For

not tye you to make any appearance at the determination of your time limited for Peace or Behaviour; but in the *Kings Bench* it doth.

And if you doe not appeare there accordingly, your Bond is duely estreated, and now more strictly prosecuted then ever heretofore.

Besides, if you doe appeare according to the condition of your Bond, there is then a great charge which falls upon you of course, for the withdrawing of your Bond, which dies in *Chancery*, or at least it requires no retraction there.

Besides, the *Supersedeas* is in some case more potent, being taken out of the *Chancery*, then out of the *Kings Bench*; for notwithstanding the Writ to binde be taken out of the *Chancery*, and beare date before, yet the *Supersedeas* out of the *Chancery* is sufficient against it howsoever. But I make question whether the *Supersedeas* of the *Kings Bench* will over-rule the *Supplicavit* of the *Chancery* bearing date before it, or no. I am perswaded (and as I remember) I have met the experience of the priviledge of *Majesty* in the *Chancery* writ in this kind. Nevertheless I leave it to the further consideration of him that desires to buy a further experience with for the experice hereof.

Note also, that you may have your *Supersedeas* to supersede one, or more, or all persons whatsoever at your own election.

And so much for Writs of Peace and Behaviour.

For

FOr the Amplitude of this Court, you shall note, that it extendeth it self into a large & immeasurable Jurisdiction, for it doth dembrace, both in Time and Circumstance, Totally in those two members of it, viz. the Rolls and Consistory: in both which, that Book doth found it self much.

For besides Offices pertaining, which it only attributes to the Rolls-Office, this Office hath The making out of all Writs of Summons to the Parliament.

All Latine Pleadings of the Chancery, concerning the Question of any Patent or other thing whatsoever which passeth the great Seale.

Or whatsoever private Deed betweene Subjects, which is acknowledged in Chancery, before the Lord Keeper, the Masters of the Rolles, or any the Masters of Chancery.

With Statutes and Recognizances taken in this Court.

With all Bills for or against any person privileged in the Chancery.

Besides, it is a Hand whereby to transmit divers things from the [illegible] and the Enrolment Office, to the Chapell of the Rolles, [illegible]

nion.)

And

And for the *Cursitors* of the *Chancery*, they make both the originall Writs of the *Chancery*, and also the *Common Pleas*. The Originalls of which Court of *Common Pleas*, I returne to the proper place, where I shall have more occasion to speake of them hereafter.

These *Cursitors* were incorporated by *Queene Elizabeth* by the name of the twenty future *Cursitors*, amongst whom, the businesse of the severall Shires is severally distributed, and therefore you must, in all cases where your suite is local and tyed to the pertaine Country, addresse your selfe to the proper *Cursitor* of the same.

If any suite depend before any Sheriffe in his Tourne or County Court, you may have a writ of *Chancery* from the *Cursitor* of that County, called a *Recordari*, to remove it.

If it lye in a Court Baron, your *Cursitor* will call it away with an *Accedas ad curiam*.

If it lye in Towne Corporate, he will remove it with a *Certiorari* returnable in *Chancery* (as aforesaid) which may be made of course, without any Bill exhibited.

And a *Procedendo* may be made also presently thereupon, before the return of the said *Certiorari*, and that of course likewise.

And also a second *Certiorari*, and a second *Procedendo* thereupon may be made, but the second *Procedendo* should be upon Bill exhibited, shewing good cause of equity, why the Complainant should be relieved.

And

And upon Bond given by the Complainant or ſome other for him, with condition that the Complainant ſhall prove the contents of the ſaid Bill, the Court of *Chancery* doth often grant a *ſpecial Certiorare*, ſigned with the hands either of the Lord *Keeper*, or of the Maſter of the Rolles for the time being.

And the condition of this laſt recited Bond, gives the Obliger onely the liberty of fourteen dayes to prove the contents of the Bill, which fourteen dayes muſt commence from the date of the returne of the ſaid *Certiorare* to be granted, (as aforeſaid.)

The Fees of proceeding in Chancery *follow.*

	l.	s.	d.
Sub Pœna Writ to answer	0	2	6
If there be three in the *Sub pœna*, you pay six pence the more.	*tot.* 0	3	4
This *Sub Pœna* may be served in any liberty whatsoever, so cannot an Attachment.			
The charge of drawing your Bill in the next which your counsell at law must doe according to the Instruction which you shall give him of the true estate of the cause; His Fee is at the least.	0	10	0
For the engrossing of your said Bill, foure pence a sheet at the least	0	0	4 *a sheet.*
The Copy *inde*, two pence a sheet at the least	0	0	2 *a sheet.*
The Attournies Fee when you put it in, which is for the whole Terme.	0	3	4
The writing of the Oath made that the *Sub pœna* was served.	0	0	6
The Oath.	0	0	4
For filing it.	0	0	4

The

	l.	s.	d.
The Attachment where the Defendant appeareth not.—	0	2	10
The breaking of it up with the Sheriffe.—	0	2	0
The Returne of that Attachment.—	0	0	4
The Proclamation of Allegeance upon the ſame.—	0	2	10
The breaking of it up with the Sheriffe.—	0	2	0
The Returne of that Proclamation.—	0	0	4
The Commiſſion of Rebellion.—	0	18	2
The *Rule* which the Complainant gives to the Defendant to make anſwer by a certaine day, in caſe where the Defendant doth appeare.—	0	0	4
As alſo for each Rule of publication after examination of witneſſes, foure pence.—	0	0	4
And for entring them in the Regiſter.—	0	0	4 *a piece.*
The Attachment, the Proclamation, Commiſſion of Rebellion.— (For not anſwering, as in caſe for not appearing.)	*as aforeſaid.*		
The Defendants Appearance.—	0	3	4

	l.	s.	d.
This is alſo his Attournies Fee for the whole Terme.—	0		*Feod. Attourn.*
The Copy of the Bill, at eight pence the ſheet.—	*Eight pence the ſheet.*		
His Counſells Fee for drawing of his Anſwer, according to his direction at leaſt.—	0	10	0
For engroſſing of this Anſwer, at foure pence the ſheet at the leaſt.—	0	*foure pence a ſheet.*	
For Copy of this Anſwer, at two pence the ſheet at the leaſt.—	0	*two pence a ſheet.*	
For the Oath made that this Anſwer is true.—	0	0	4
For every Defendant 4.d. *pro conſimil.*		0 0 4	*quilibet Def. pro conſimil.*
For the Commiſſion to take the Anſwer in the Country by *Dedimus poteſtatem.*—	0	7	10
Beſides the engroſſing of the Bill which is included within it.—	*every ſheet inde,*		6.d.
The *Sub Pœna* for Coſts, given to the Defendant, incaſe where the Complainant doth not put in his Bill within the time allowed.—	0	2	6

For

	l.	s.	d.
For a Bill of Costs and entry of it *inde*,	0	2	4
The *Attachment*, *Proclamation*, and *Commission* of *Rebellion*.	*as in case aforesaid.*		
A Joynt *Commission* to examine Witnesses in the Country.	0	7	10
For which the Plaintiffe payes.	0	7	10
And the Defendant	0	6	8

Besides the Term Fees of— 3.s. 4.d. *per peece.*

A *Commission ex parte*, to examine Witnesses in the Country.	0	7	10
For examination of the first Witnesse here before Examiners.	0	2	6
For every Witnesse examined afterwards.	0	2	6
For drawing of the *Replication*, if it be done by Counsell, as in case for the Bill.	*as for the Bill.*		
For the *Rejoynder*.	0		*the like.*
If there be no new matter in the *Replication* of the *Rejoynder*, your Attournies Clerk will draw them for you of course, for some small matter.	*as you can agree.*		

For

	l.	s.	d.
For the Copies of the Depositions of any Witnesses returned by Commission.	0	0	8 every sheet.
For Copies of Depositions taken in the Examiners Office.	0	12.d. a sheet.	
For a Motion in Court.	Counsell Fee.		
For the drawing of the Order thereupon *cum Cop.*	0	3	0 every side,
For entring of the Order.	every side.	6.d.	

Fees

Fees of an Injunction follow:

	l.	s.	d.
INjunction in all *Viis & modis.*	1	2	6

Fees of a Decree follow.

FOr a Decree the drawing, &c.	*as in case of an order.*		
Sub pœna to Testifie.	0	2	6
Sub pœna to Rejoyne.	0	2	6
Sub pœna to Hear Judgement.	0	2	6
For getting the *Hearing* to be set down.	0	*as you can agree with your Attourney.*	
For the *Rules* to publish the witnesses, being four.	*per* piece 0		4
Besides four pence a piece paid for entring in the Register.	0	0	4
For copy of *Replication, Rejoynder, Rebutter, and Sub-rebutter*, as for copy of Bill or Answer.	*as aforesaid for Bill and Answer.*		
Sub Pœna super ordinem, to shew cause.	0	7	2
Sub Pœna of Ducas tecum.	0	7	2
Sub Pœna De executione ordinis.	0	10	0

The

The charge of a Supplicavit *in* Chancery.

	l.	s.	d.
Item, the Oath.	0	0	4
Item, the *Supplicavit* it ſelfe.	0	5	6
Item, the warrant upon it, *vic.*	0	2	0
Item, or the *Certiorare* to certifie the Bond taken upon it.	0	2	6

Charge of a Superſedeas *in* Chancery.

TO the Maſter of the *Chancery* for taking of his Bayle.	0	2	0
For the warrant.	0	2	0
For the Writ.	0	5	6
For the allowance of it.	0	2	0

Theſe ſaid Fees be onely of the caſe of a ſingle perſon, and for the peace onely.

But if it be of more perſons, or for behaviour, as well as the Peace, then the charge is accordingly enlarged.

THE

The Fees of all Originall Writs sealed in the Chancerie

A.

	l.	s.	d.
Accedas ad curiam.	0	1	6
Admensuratio pasturæ.	0	1	6
Ad quod Dampnum.	0	1	6
Annual. reddit.	0	1	6
Assis. cujus generis.	0	1	6
Attinct.	0	1	6
Audita querela.	0	1	6

C.

Certiorare.	0	1	6
Cessavit.	0	1	6
Conspiracy.	0	1	6
Contentione.	0	1	6
Coronatur eligend.	0	7	2
Cui in vita.	0	2	6
Cur claudend.	0	2	6
Computit.	0	1	6
Sum. lib. de Covenant.	0	2	6

Diem

D.

Dedimus Potestatem. 0 — 1 — 6
per bre. de Cons. Dei.
Special. Dedimus potestatem. 0 — 1 — 6
Original. de Debt & detinue. 0 — 1 — 0

E.

Ejectione firme. 0 — 1 — 6
Ejectione Custod. 0 — 1 — 6
Excommunicat. Capiend. 0 — 7 — 8
Execut. in Dc. 0 — 2 — 6
Expenc. nullæ. 0 — 7 — 8
Error in London. 0 — 7 — 8
Patent fact. 0 — 7 — 8
Elegit. 0 — 10 — 0

F

Falso Judicio. 0 — 2 — 6
Fac. fac. Maritag. 0 — 2 — 6
Forma Donationis. 0 — 2 — 6

H.

Heriot. Capt. 0 — 2 — 6
Hen. Replev. 0 — 5 — 0

L.

Leprosi. amovendi
Libertat. proband.
Libros & alia exequend.

M.

Maihemes.
Maintenend.
Manifestum.
Manifeverunt.
Mittimus.
Mandamus. — — — 0 — 7 — 2

N.

Noque. — — — — 0 — 3 — 0
Non molestand. — — — 0
Non capiatur
Non Pound. in Assisa. —
Nullum. — — — — 0 — 3 — 6
Nocumentum. — — 0 — 3 — 6

O.

Officiar. non faciend. — — 0 — 5 — 0
Ordinar. non servicand. — 0 — 2 — 6

P.

Pro. defect. — — — 0 — 3 — 6
Pro. — — — — 0 — 3 — 6
Pro. — — — — 0 — 3 — 6
Pro. fratt. —
Pacis. faciend. —

	l.	s.	d.
Patent. brev. de errore corrigend.	0	7	6
In Assis. assign.			
Pleg. requietand.	0	½	6
Pone.	0	2	6
Perambulat. faciend.	0	5	6
Palibus reparand.	0	2	6
Post deseisin.	0	½	6
Pracipe in Cur.			
Procedend.	0	2	6
Prohibition.			
Propriet. proband.	0		

R.

Relate clauf.	0	2	6
Redisseisin.			
Reparatio Pontium utarum Domini			
Replegiari Original.			
Rescous.	0	2	6
Recordare.	0	2	6

Scitum non fecimus T.S.	0	2	6
Scitum non fecimus.	0	2	6
Significavit.	0	7	2
Bre. de estat.	0	2	6
Sub pœna.	0	2	6
Supersed. inde			
Supersed. quegace.			

	l.	s.	d.
Superſed. com. al.	0	5	6
Tranſ.	0	1	0
Tranſ ſuper ſuam.	0	2	6
Talam. Maritagii.	0	2	6
Vaſc.	0	2	6
Villat. removend.	2	2	
Vitar. eligend.	0	2	2

Warrantia chartæ	0	2	6
Warrantia Dici.	0	5	6
Witherham.	8	5	6

And ſo much of the Originall Writs iſſuing out of the Chancery.

I Muſt acknowledge that I have omitted the Records enrolled in the Chappell, and thoſe that are either in the hand of the Maſter of the Rolls and Riding Clerks, or elſe in the hands of their journey-travelling over to the Chappell; becauſe I have written a particular book thereof entituled, *Directions for Search of Records.*

Only, this Court, in ſtead of the leading *Writs to the ſheriffs of the Court of Common Pleas, becauſe they beſt know the prices of them.*

Their Fees in the point of proceeding, are for

THE

Only

THE COURT OF REQUESTS:

OR

White-Hall at *Westminister*.

THis is likewise a Court of Conscience and Equity.

And the practice thereof is by English Bill, Answer, Replication, and Rejoynder; like to the forme of the Chancery.

The forme of their proceeding is generally alike.

Onely, this Court, in stead of the leading Writ of Subpœna, useth a Writing Sealed

Or otherwise, to summon such as are neere hand, by their Messenger and proper Officer of the Court.

Their Fees in the point of proceeding, are for the most part alike:

Onely

Only in stead of two shillings six pence for Summons by the same, you pay at the Seal for Summons [illegible] —o

Or if the Summons be made by the Messenger here in town, you pay to him for his paines, —o— 3. 3.— 4.d.

For every party summoned, —the like.

Besides for Warrant to doe it, what you please, as I take it. —ad libitum.

This great burden at the very entrance into a Suit here, does much hinder the Court, if they would duely consider it.

And so much for the Court of Requests.

The

THE COURT OF The Provinciall Councell of the *Marches* of *WALES*.

THis Court of the Provinciall Councell for the Marches of *Wales*, holds the like forme of proceeding generally and for the moſt part, as doth the *Chancery* before mentioned.

The greateſt difference is in the Leading Proceſſe of the ſame.

And therefore, I ſhall not need to recite the ſame thing againe, but proceed in

[redacted]

THE COURT OF The Provinciall COUNCELL, eſtabliſhed at YORKE.

THis Provinciall Councell follows the courſe of proceeding likewiſe uſed in *Chancery*.

And for your better direction, that you may underſtand the Lords Preſidents Powers and priviledges, in either of the two Provinciall places, I referre you to their Inſtructions remaining on Record in the *Chancery*, whereby you may be fully ſatisfied in this point.

The greateſt difference here likewiſe is in the Leading Proceſſe.

And both the Provinciall Councels are often ſubject to the Prohibitions of the Courts at *Weſtminſter*, which makes many of both Juriſdictions chooſe rather to begin their Suites there, then at their owne home.

THE [illegible] into any Court of Engliſh proceeding

THE COURTS

The County Pallatine of *Chester*, County Pallatine of *Lancaster*, County Pallatine of *Duresme*.

AND

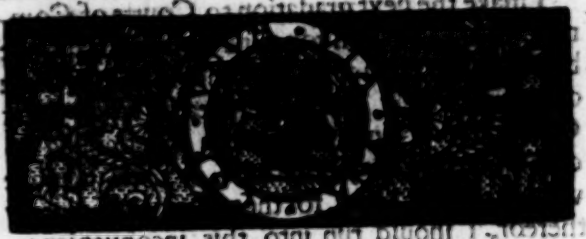
The *Chancery* of LONDON, with the *Exchequer Chamber*.

WESTMIN.

IN the formality of their proceeding they do all intend to the practice of the *Chancery*, before set forth and declared, admitting only some small alteration of the common Law in some Especial cases, and also in some things ruled by their proper Customes and peculiar priviledges respectively.

So that he who is a sufficient practitioner in our great *Chancery*, may be able and worthy the admission into any Court of English proceeding whatsoever, or wheresoever.

I make the next gradation to Courts of Com-
mon Law, and first for those of the Counties Palatine
here in this Treatise will be
of Common Pleas, as the onely Leader of all other
Courts for all kinds of matters appertaining to
common Law, otherwise
with the
thereof, I should run into this inconvenience,
that I must be forced to repeat the same thing
over againe in personall actions, and mixt acti-
ons; both which the King's Bench admitteth and
holdeth, &c.



THE KINGS-BENCH.

THe *Kings Bench* consists of the *Prothonotary* side, and the Crowne Office side, &c.

On the *Prothonotaries* are, (as I delivered in my *Search* of Record)

Onely Personall Actions, and some mixt Actions; besides such matters as the King is party.

FOr their proceeding in personall and mixt Actions, it is generally the like as that of the *Common-Pleas*, and therefore shall not require a second recitall. So are their Fees generally alike: for hee that is a sufficient *Common-pleas* man, is able to the practice of any other Court of Common Law whatsoever.

And therefore I shall onely shew you in what points

points of proceeding they doe differ, and how easily those differences are and may be reconciled withall.

The *Kings Bench* useth onely a *Latitat* for their Leading Processe.

To this, the first Leading *Capias* of the *Common-Pleas* does answer.

For as the *Capias* hath an originall Writ to goe before it, so the *Latitat* supposeth and pretendeth a Bill of *Middlesex* to lead it also, for that it is granted in the *Kings Bench*, because it is intended that the Defendant upon returne of a Bill of *Middlesex* precedent doth *Latitare invalidatur*, &c.

Onely the *Latitat* is like to Doctor *Giffords* wives, which serves for all diseases, and so it holds one forme in all cases and actions whatsoever, and charges the Defendant onely *De pl. Transf.* be it for debt or other cause, &c.

But the Originall must containe the true cause of action, and be so exactly set down and drawn, that all the following Processe and proceeding may be tyed to agree with it *punctuatim*.

The *Kings Bench* man payes Fine to the King, in debt and the like actions above — 40. l.

So doth the *Common-pleas* man too.

But the *Kings Bench* man he payes but halfe so much as the *Common-Pleas* man doth, and the *Common-pleas* man is the better pay-master too: For he payes at the first entrance into suite, and upon the Originall, whereas the other payeth not

not till he declareth, which in many caſes never is done at all.

In the *Kings Bench* the Plaintiffe hath longer time to declare then is allowed in the *Common-Pleas*. And where the Defendant appeareth upon ordinary Bayle, whoſoever will, may come in and declare againſt him, which is not uſed in the *Common-Pleas*.

In the *Kings Bench* you ſhall not need to put in ſpeciall Bayle, unleſſe it be for debt upon Speciality.

So it is likewiſe in the *Common-Pleas*.

But the *Common-Pleas* enjoynes ſpeciall Bayle for 10. l. and the other not under 20. l.

In the *Kings Bench* the Attourney for the Defendant may mend or alter his Plea, after it is delivered over.

So may the *Common-Pleas* man too.

But the *Common-Pleas* man muſt doe it within the ſame Terme, whereas the *Kings Bench* man hath a longer time; for that he is not tyed to enter by parcell, and ſo ſoon as the *Common-Pleas* man is; but to doe it altogether, and at much more leiſure.

For the charge of removing the body of any Priſoner, by *Habeas Corpus* in the one, or by *Oſtenſum eſt* in the other, though there be ſome difference in the firſt riſe, and here and there afterwards in the proceeding of the Remove, putting in Bayle, and filing of it, yet if wee conferre their Bills of Coſts together, in the concluſion

we

we ſhall find a very little difference in the whole.

Both pay dammage cleere, that is poundage upon every twenty ſhillings in a Judgement; but the *Kings Bench* payes onely twelve pence in the pound, and the other payeth two ſhillings.

There be ſome other few differences in the formality, but none in the ſubſtance of their myſteries. And thus I leave the *Prothonotary* ſide.

For the Crown Office ſide: it pleaſed ſome to make an eſpeciall ſuite to exclude my pen from medling in their myſterie in my former Work. And therefore (as I then ſaid) ſo I muſt now reſolve, that I doe adviſedly pretermit it, and give it back to their owne care, who are better able to performe this generall good at their pleaſure, when it ſhall pleaſe them to intend the publick; and how I bend my ſpeech homeward, and to my native Birth-bed: *London*.

London

LONDON *COURTS:*

(viz.)

First, the Lord Mayors: *Secondly*, the Sheriffes *Courts.*

THey all deale in Actions perſonall for the moſt part, except on the Lord Mayors ſide ſometimes a Reall Action falls in by chance, for matter or demand of ſomething lying within the City.

The Court of *Huſtings*, is a Court of Common Law, for Reall Actions and Pleas of Law, and arguing Writs of Errors, &c.

The proceeding generally is, *ad exemplum* of the *Kings-Bench*, onely differing in ſuch caſes, as where the Cuſtomes carry the predomination.

The Defendant if he be a Freeman, hath foure defaults, (that is,) to appeare on the fourth Court after Bayle entred, ſo he hath but three defaults excluſive, and that onely in plea of Debt, Account, or Covenant broken, and not otherwiſe.

The

The Complainant may and ought to declare the first Court after they are set, and while further time is given, is *ex gr. Cur' per mat' Assert' &c.* or if the Complainant have no Attorney the first Court he may be Non-suited by the Court.

And the Defendant is brought by Writ out of the Prison to the Barre, to plead unto the said Declaration; which Writ is commonly called a *Duci facias* which is but the Sheriffes mandate made by the Clerke of the Papers.

Also in any Action on the case upon any *Assumpsit* at Westminster, or elf-where, the Defendant can never wage his Law at all; but in this the generall *Assumpsit* in London helps the Complainant, and differs from other Courts only in that the Complainant need not to expresse any particular consideration in it, or averre his just precise, demand but in Plea of Debt without speciality the Complainant may wage his Law in London, as elf-whete.

The proceeding here generally in all cases, where they lay by their customes, are to the President of the common Law at *Westminster*: except some, as of a sole Merchant, it is no more then an Institution, or an Extent to make an attachment in London.

The marking of a cause before the Lord Mayor of London, is as an Injunction in *Chancery*, to stay judgment and execution, untill examination in equity.

Charge of judgment by default in debt is 8s. 6d.

By default in Covenant broken is 8s. 6d.
unleſſe the declaration be ſpeciall, and ſo more or leſſe.

By default in treſpaſſe, and on the caſe 22.s.

If by petty-jury, if by grand, 24.s.

By tryall in debt petty-jury 22.s.2.d.

By tryall in debt grand-jury 22.s.2.d.

By non-ſuit ordinarily 7.s.2.d. 7.s.8.d. in debet. But the Judge hath power to increaſe or diminiſh all Coſts.

For the Cuſtome of the City, I referre you to *Fleta*, and *Liber Albus*.

Both which treat upon the ſame Subject, and are kept in their common Treaſury at *Guild-Hall*, in *London*, as I declared in my laſt of Direction for Search, &c.

And for me it may ſuffice for *London*, to avoydance of Repetition of the ſame matter over againe.

All

London, as elſe-where.

The proceeding here generally in all cauſes, where they lay by their cuſtomes, are to the Pre-

cept ſome, as of a Sole Merchant, it is no more then an Inſtruction, or an Extent to make an Inquiſition in London.

The marſhaling of a cauſe before the Lord Mayor of London, is as an Injunction in Chancery, to ſtay judgment and execution, untill examination in equity.

Charge of judgment by default in debt is 8s. 6 d.

Incorporate.



THE STARRE-CHAMBER.

The Practice of proceeding there.



First, it is to be understood, that in cafe betweene party and party, Subjects here, the Leading Proceſſe is onely a *Sub Pœna ad ſummonendum* againſt the Defendant.

And the Defendant hath foure dayes after the Returne of the *Sub pœna* to make his appearance, which he muſt carefully enter.

	l.	s.	d.
And for entring his appearance, hee is to pay. — — —	0	2	0
Beſides the Attournies Fee, which ſerves alſo for the whole Terme. — — — —	0	3	4
If hee appeare after the foure dayes, and no Attachment be awarded againſt him, he then payeth onely for the *Poſt Diem.* —			

After the time limited for the Defendants Appearance is paſt, upon the Defendants default, and

and Oath made of the ſerving of the *Sub Pœna*, the Plaintiffe may have an Attachment againſt the Defendant.

l. s. d.

He ſhall pay Fee for the Oath — 0 — 2 — 6

For the Warrant for the Attachment — 0 — 2 — 4

Alſo for the Writ and Seale — 0 — 2 — 6

If his Returne be at a day certain, he hath that day, and the next day after to appeare.

But if upon a generall Returne, he hath foure dayes after (as aforeſaid:) wherein it appeareth likewiſe, that this Court followeth the practice of the high Court of *Chancerie*.

If the Attachment goe forth, and the Defendant be taken thereupon, and cometh in them to make his appearance: he muſt enter into Bond to anſwer the Contempt.

Fee *inde*, — — — 0. l. — 2. s. — 0. d.

If a Bill be exhibited, the party againſt whom it is, may, (having notice thereof) if he will, appeare *gratis* unto it, and make anſwer without Proceſſe.

If upon the Attachment made out againſt the Defendant for not appearing, the Sheriffe return *Nihil fuit*, the Plaintiffe may may have an *Alias Attach.*

l. s. d.

For the Warrant *Inde* — — 0 — 3 — 4

Writ and Seale — — 0 — 2 — 6

If the Sheriffe returne *Non eſt inventus*, upon the Attachment, the Plaintiffe may have an *Alias.*

2 B B7

tach. with Proclamation, wherein this Court hath purſues the practice of the *Chancery*, &c.

	l.	s.	d.
Fee for Warrant *inde.*		0	3
Writ.		2	6

And if the Defendant doe not appeare upon the Proclamation, the Plaintiffe is to call for the Returne thereof, which the Sheriffe will returne *Proclamari feci*, and thereupon the Plaintiffe may ſue forth a *Commiſſion* of *Rebellion*, directed to five ſuch Commiſſioners as himſelfe ſhall pleaſe to name, for the apprehention of the Defendant, &c.

	l.	s.	d.
Fee for the Warrant *inde.*		0	3
Writ and Seale.		1	0

If the Defendant appeare upon any of the Attachments, the Plaintiffe may have him committed to the Fleet for his Contempt, upon order herein.

	l.	s.	d.
For entry and Copy of the Order *inde.*		0	3

Where note, that it is no contempt, until ſuch time the Councel ſhall judge and order it to be a contempt.

If the Defendant, after he had appeared upon Attachment, doe depart without anſwering of the Contempt; his Bond may be eſtrated into the *Exchequer*, and order may be for his committment likewiſe, notwithſtanding the advantage to be taken of the Bond.

The Plaintiffe muſt, before he hath any Warrant

tant for the Proceſſe, here put into the Court a perfect Bill, or elſe a Bill *pro forma*.

If the Plaintiffe doe exhibite a Bill *pro forma*, ſo much time as the Defendant hath after the Returne of the *Subpœna* to make his appearance, even ſo much time hath the Plaintiffe to make his Bill perfect.

If the Plaintiffes Bill be not put into the Court in due time, the Defendant may get him to be diſmiſſed with Coſts.

For every twenty ſhillings ſo aſſeſſed for Coſts to the Clerk of the Court *inde*. — l. s. d.

For the Warrant to lead the Writ whereby to demand it. — l. s. d.

For the Writ and Seale — s.

If upon ſerving of the ſaid Writ for Coſts, and *Affidavit* made on that behalfe, the Coſts be not paid by the Plaintiffe, the Defendant may have an Attachment againſt him.

The Fee of which Attachment. — *ut ſupra*.

The Defendant hath eight dayes after his appearance entred, to put in his Anſwer, ſo as he doe appeare within his due time.

For the Copie of the Bill, for l. s. d. every ſheet *inde*.

If the Defendant cannot appeare perſonally, by reaſon of ſickneſſe, &c. upon *Affidavit* made in that behalfe, he may have a *Dedimus poteſtatem*, to take his Anſwer in the Country, as is uſed in *Chancery*.

Fee

	l.	s.	d.
Fee for the *Affidavit* herein. — —	0	2	4
The Copy thereof. — — —	0	2	0
The *New* appearance of every ſeverall Defendant ſerved to appeare and having this benefit. — — } *payable in Court.*	0	1	4
For every the like for the ſame to his Attourney *per* piece. — — } *every name.*	0	1	8
For ingroſſing of the Bill, for every ſheet *inde*. — — } *every ſheet.*	0	0	8
The Warrant. — — —	0	3	4
The Writ and Seale. — — —	0	7	2

If the Oath to juſtifie the impotency in the ſaid caſe cannot be made; then the ſaid *Dedimus poteſtatem*, muſt be obtained of, and from the Lord *Keeper*, and by ſuite unto him to be made in that behalfe.

Fee for the entry of this Order.	0	3	0
For the other Fees. —	*ut ſupra.*		

If neither the *Affidavit* of impotency can be made, nor the Lord *Keepers* allowance can be had herein, then meanes muſt be uſed to procure the Plaintiffes conſent, that the Anſwer may be made by *Dedimus poteſtatem*, in the Countrey; which if it be alſo denied, there is no remedy, but the Anſwer muſt be made here perſonally under the perill aforeſaid.

After a Commiſſion of *Dedimus poteſtatem*, is gone forth to take the Anſwer in the Countrey: it muſt be returned, after it is executed, by Oath, unleſs one of the Commiſſioners himſelf bring it.

Fee

	l.	s.	d.
Fee for the Oath in this cafe, —	0	0	4
For entry thereof. —	0	1	0

Where note, that the delivery made by a Commiſſioner, ſaveth both the Oath, and the charges of the Oath alſo.

And if the Defendant in this cafe doe not anſwer in time, then the Plaintiffe may make out an Attachment, (*ut ſupra.*)

	l.	s.	d.
For the Warrant *ſtale.* —	0	3	4
For the Writ. —	0	2	6

And upon the Attachment in this cafe, the Plaintiffe may proceed to a Commiſſion of Rebellion, (*ut ſupra.*)

And if a *Dedimus poteſtatem* be granted to the Defendant to make anſwer in the Country, the Plaintiffe may (if he pleaſe) joyn with him therein, and miniſter Interrogatories for the Defendant to anſwer unto likewiſe.

If the Plaintiffe doe joyne with the Defendant in the *Dedimus poteſtatem*: and the *Dedimus poteſtatis* is obtained by *Affidavit* made (*ut ſupra.*) The Plaintiffe muſt then and in ſuch caſe pay to the Defendant the one halfe of the charge of the Writ and Seale, &c.

	l.	s.	d.
Fee for the Warrant for the Writ.	0	3	0
The Writ —	0	7	2

The Plaintiffe hath foure dayes after the Defendant hath delivered in his Anſwer, to put in his Interrogatories, whereupon the Defendant is to be examined.

	l.	s.	d.
Fee for the Copy of the Answer for every sheet *inde*.	0	1	0

And if the Defendant so please, he may omit the benefit of putting in of any such Interrogatories at all, for he is not bounden thereunto.

And if the Defendant doe depart out of Town, before he be examined upon Interrogatories (as aforesaid;) then the Plaintiffe may have an Attachment against the Defendant for such departure.

	l.	s.	d.
Fee for the Warrant *inde*	0	3	4
For the Certificate of the examiners, to testifie that he the Defendant is not examined	0	1	6
For the Writ	0	2	0

And upon the said Attachment, the Plaintiffe may proceed to the Commission of Rebellion against the Defendant, if he will (in manner as aforesaid.)

If the Interrogatories be put in by the Plaintiffe, the Defendant may be examined thereupon.

Fee for the Examination.	0	6	8
For admittance to Attourney.	0	1	4

But if no Interrogatories be put in by the Plaintiffe, within the time limited (as aforesaid:) Then after the time (which is foure dayes) expired, the Defendant may safely depart out of Towne.

Provi-

Provided, that he the Defendant doe obtaine from the Examiners, a Certificate to testifie that the Plaintiffe hath not yet put in any Interrogatories against him. ——— ———

Fee for the Certificate. ——— *as supra.*

For his admittance to Attourney. ——— *as supra.*

And if the Defendant doe *demurre* to the Bill of the Plaintiffe, then the Defendant shall not need to put in sureties thereupon, but onely to move the Court, that his said *Demurrer* may be referred to the Examination, and Consideration of some of his Majesties Justices of either Bench, or to some of his Majesties Counsell learned in the Law: and that they may certifie back to the Court, whether the said *Demurrer* be sufficient or no.

For the entry of the Order thereupon. ———

And if the Justices, or his Majesties Counsell in the Law, to whom the said *Demurrer* is so referred and committed, doe upon Examination and Consideration thereof, certifie to the Court, that they finde the said *Demurrer* to be insufficient: then thereupon the Defendant is to pay to the Plaintiffe for his extraordinary costs in this behalfe, ———

And the Plaintiffe in this case may likewise have a *Sub poena* against the Defendant to make a better Answer.

Fee for the entry and Copy of the said Certificate. ———

	l.	s.	d.
The Warrant for the Writ to call the Defendant to make a better Answer.	0	2	0
The Writ and Seale.	0	2	6

And if the Defendant do not pay to the Plaintiffe the said summe of forty shillings so awarded for the insufficiency of the *Demurrer*, and that upon the returne of the *Sub pœna* to make a better Answer: then the Plaintiffe may have a *Sub pœna ad solvendum*, in that behalfe against him.

	l.	s.	d.
Fee for the Warrant *inde*	0	2	0
For the Writ and Seale	0	2	6

And if the Defendant doe not pay the Plaintiffe upon that *Sub pœna* being served upon him, and Oath thereof be made: then the Plaintiffe may have an Attachment against the Defendant for his said Costs so awarded, and proceed thereupon.

Fees *inde*. *ut supra.*

If *Affidavit* be made that the Defendant is so aged or impotent, that he cannot come to answer or *demurre* here in person, his *Demurrer* will be accepted, as though he were personally present at the doing thereof.

And then if the Defendant doe *demurre* to one part of the Bill, and answer to another part of it, the Defendant is to answer to Interrogatories touching that part of the Bill, unto which he so answered.

And

And if upon examination had of the Defendants *demurrer*, the Justices or such of his Majesties Counsell learned in the Law, unto whom the same was referred, doe certifie to the Court that they find the *Demurrer* to be sufficient, then, and thereupon the Plaintiffes Bill is to be quite thrown out, and the Defendant shall be dismissed out of the Court, with his Costs in that behalf sustained, to be allowed upon him.

	l.	s.	d.
Fee for the entry and Copy of the said Certificate.	0	1	0
For the Dismission.	0	2	0
To his Attourney for his Bill of Costs.	0	8	0
To the Clerks for entry.	0	2	6
For the Warrant to lead his Writ *ad solvendum.*	0	2	0
For the Writ and Seale.	0	4	6

Where note, that if neither the Plaintiffe, nor the Defendant doth move the Court to have the Demurrer to be referred in manner as aforesaid; there the cause proceedeth no further, but dieth.

And note, that oftentimes the sufficiency of Answers made to Interrogatories, is referred by the Court to Commissioners. But howsoever the Certificate is made thereupon, for, or against either party, no dismission doth follow thereupon, only some small Costs is awarded to the party, on whose side the Certificate is made, for the recovery of which Costs they may take such course

course and order, as is to be taken in case of a *Demurrer*.

Fees *infra*, ——— *ut supra*.

When the Defendant hath put in a sufficient answer to the Plaintiffes Bill, and the Defendant is likewise examined upon Interrogatories, (as aforesaid) then the Plaintiffe may reply, and take forth a Writ *ad Replegiandum* against the Defendant which must be served upon him for that purpose.

Fee for the Copy of the answer and examination *super interrog.* } 0 — 2 — 6 *ut supra.*

The Warrant to lead the Writ. — 0 — 1 — 0

The Writ and Seale. — 0 — 2 — 6

Where note, that the Plaintiffe is not compellable to reply, before such time as all the Defendants have made answer. ———

And if the Defendant answereth generally, *Not guilty*, then there shall need no Replication to be made at all, because they be at issue upon the same Plea: and then the Plaintiffe may take out his Writ *adjungendum in Commission*, to make the Defendant joyne with him in Commission.

Fees *infra*. ——— *supra.*

And if the Plaintiffe doe reply before such time as the Defendant is examined upon Interrogatories, he loseth the benefit of examining the Defendant in that kind.

And if the Plaintiffe doe not reply, the next day after the time expired, which is given to him in warning to make his Replication, the Defen-

Defendant may in such case, and upon such default of the Plaintiffe, move to have the cause dismissed, for want of effectuall prosecution.

Fee for the entry of the Order. — o — 3 — o

For the Rest. — *ut supra*, for *Dismiss.*

When the Plaintiffe hath served the Writ *ad Rejungendum* upon the Defendant, and *Affidavit* be thereof made, he may take forth his Commission to examine Witnesses.

This Commission is to be directed unto such Commissioners, as the Plaintiffe and Defendant shall agree upon.

	l.	s.	d.
Fee for the *Affidavit* made for the serving of the Writ *ad Rejungendum*		2	
The Warrant.	o	1	3
The Writ Com. — —	o	—	7

If the Defendant doe refuse to joyne with the Plaintiffe in the Commission, then the Plaintiffe may sue out the Commission himselfe alone on his party, and direct it unto foure Justices of the Peace, and execute it at his pleasure.

Otherwise the Plaintiffe may (if he will) examine his Witnesses here in Court.

When the Writ *ad Rejungendum* is served upon the Defendant, he need not to enter any appearance thereupon, but onely to Rejoyne to the Replication.

Fee *inde*. — — — *ut supra*.

And if the Defendant do joyn with the Plaintiffe

tiffe in Commiſſion, then the Defendant is to pay the one halfe of the Fee of the Commiſſion:

Fee *inde.* —— —o— *ut ſupra.*

If the Plaintiffe doe delay the ſuing forth of any Commiſſion to examine Witneſſes, then the Defendant, upon Oath made that he was ſerved to rejoyne, may himſelf alone take forth a Commiſſion to examine on his party.

Fee *inde.* —— —— *ut ſupra.*

Or otherwiſe, the Defendant for ſuch delay of the Plaintiffe, may the next Terme following move to have the Cauſe diſmiſſed.

When the Commiſſion is executed and returned, the Plaintiffe or Defendant may aſſigne and give to each other a day to ſhew cauſe why Publication ſhould not be granted in this matter, &c.

	l.	s.	d.
Fee for Returne of the Commiſſion. —— —— ——	0	0	4
The Rule of Publication. —— —— ——	0	1	0

After Aſſignment to Publication, and the dayes ſo aſſigned be expired, if nothing be ſaid to the contrary, the Publication may be entred.

	l.	s.	d.
For the entry of Publication —— —— ——	0	1	0

Note that nothing ſtayeth Publication, but it muſt be granted upon

Order,
Affidavit,
Certificate,
or
Conſent.

After

After publication is so had and procured (as aforesaid) the cause standeth then at the highest. For untill the hearing, nothing more is to be done here.

For entring of the Cause then into the common Book of Hearing. —— l. 0 s. 1 d. 0

Lastly, you shall observe that nothing altereth the aforesaid grounded Rules of this most Honourable Court, but only

Order,
Affidavit,
Certificate,
or
Consent.

Which procured upon some extraordinary accidents, doe sometimes change the prescribed customs of proceeding and rule of the Court.

The forme of proceeding Ore tenus in the Starre-Chamber *followeth.*

IF the Delinquent hath done or ſpoken any thing worthy the Hearing and Cenſure of this honourable Court, and be queſtioned for the ſame, and thereupon doth confeſſe the fact or words, and ſubſcribeth his hand to the ſame Confeſſion made in writing before the Lord *Chancellour* or Lord *Keeper*, or any the Lords, Judges, or the Kings Counſell; and doth, when he is called to the Barre to anſwer, likewiſe confeſſe the ſame to be true, and acknowledgeth his hand ſubſcribed to the confeſſion made (as aforeſaid:) Then, and in ſuch caſe the Court uſeth to proceed to the Sentence and Cenſure in the matter.

It hath not been ſeen formerly, that any but the Lord *Chancellour* or Lord *Keeper*, the Judges, or the Kings Counſell have taken any ſuch Examinations or Confeſſions ſo ſubſcribed under the Delinquents hand (as aforeſaid.)

Nevertheleſſe, if another who hath authoritie in this behalfe, ſhall take any ſuch examination and ſubſcription, and the party ſo examined and ſubſcribing, ſhall at the Barre confeſſe the matter, and acknowledge the hand; the Court may proceed to ſentence and cenſure thereupon.

For

For the life of his Examination is the Confeſſion and acknowledgement thereof at the Barre, which the Court doth examine him (as the cuſtome is) whether that which is confeſſed in writing be true or not.

And if the Lord *Chancellour* or Lord *Keeper*, the Judges, the Kings Counſell, or any other ſhall take any ſuch Examination and Confeſſion; yet, if the party at the Barre ſhall either [illegible] hand thereunto ſubſcribed, or the matter [illegible] contained, to be true, when the Court [illegible] uſe to proceed to Sentence or cenſure [illegible]

So conſequently the ſtrength of the Examination ſeemeth not to ſtand in the party who taketh it, if he be of authority, but in the parties Re-examining the ſame at the Barre, and the Recognization thereof.

And ſo I conclude the practice of the Court of Starre-Chamber.

The Proceſſe and proceedings of the Chamber Barre are diſtributed between the two Remembrancers of this Court; (viz.) the Kings Remembrancer, and the Lord Treaſurers Remembrancer.

And

THE EXCHEQUER.

THe *Exchequer* hath three severall places of proceeding, according to the differing matter of businesse belonging unto it on the pleading side: *viz.*

The *Chequer* Barre.

The *Chequer* Chamber.

The Court of *Pleas.*

For the *Exchequer* Chamber, it is the English Court or place where the proceedings are held by English Bill and Answer; and the proceeding thereof is very much like to that of the *Chancery*, (as I said before) and therefore I meane not to insist any further upon it.

For the Court of *Pleas*, it is very imitative of the Courts of common Law in the Hall, and therefore I would be loth to boyle the same meat twice over to your Trencher: but reserve my self for the *Chequer* Barre especially, and the Reciept side.

The Processe and proceedings of the *Chequer* Barre are distributed between the two *Remembrancers* of this Court; (*viz.*) the Kings *Remembrancer*, and the Lord *Treasurers Remembrancer*:

And

And what doth properly appertain to the one, and what to the other, I have at large set down in my *Direction for search of Records*, according to the finall doome and order of Sir *Richard Lyster*, Lord chiefe Baron, in the time of King *Henry* the Eighth.

And by the view of the particular matters and businesses therein appropriated so respectively, you may the better judge of the proceeding to be held upon them; the rather, for that even here at the Barre side, they doe in most things follow the practice of the common Law also.

Therefore I shall bend my selfe to set forth the practice of those things which are not presidented in the other common Law Courts at all, being matters onely proper to this, &c. with that small difference which is between this Court and those of the common Law below Staires, in point of Appearance at the beginning of a Suit, &c.

The

The Order of Appearance in the Exchequer.

IN the *Exchequer* the appearance may be made by Attourney, so that there be sureties laid in to answer the matter.

This Bayle must be alwayes taken before a Baron in the Court, and not in his Chamber, as is used in other Courts.

The Processe is a *Sub pœna*, and if the Defendant doe appeare thereupon by his Attourney, his sureties must be bound by Recognizance (as aforesaid) with condition that he shall render, &c. if the Defendant be condemned.

If the Plaintiffe be pleased, the hand of the Defendant may be sufficient in this case, whether he appeareth personally or no.

And except the matter be the greater, one surety may suffice, &c.

The charge of Appearance upon a Sub pœna *in the* Exchequer.

	l.	s.	d.
IN*primis*, the Appearance,	0	0	8
The Recognizance,	0	0	8
The Attournies Fee,	0	3	4
The Copie of the Information, at eight pence the sheet.	0	0	8 *the sheet.*

For

	l.	s.	d.
For entring of the Bayle, if it be in generall issue,	0	5	0
If in a speciall issue, then for every halfe Roll,	0	16	4
To a Counsellour for drawing of the Plea in Barre at the least,	0	6	8
	If it will satisfie.		
The *Sub pœna* it selfe and Seale whereupon the appearance is,	0	2	7

The charge of an Inrollment in the Exchequer.

In primis, to the Baron before whom the acknowledgement is made,	0	6	8
To the Master of the Office for his hand.	0	6	4
For every Roll,	0	3	4
To the Attourney,	0	3	4
Summ. Total. inde	0	19	8

The charge of the Sheriffes account in the Exchequer.

	l.	s.	d.
Inprimis, for the *Tales* upon payment of proffers,	0	2	8
For the entry of the same *Tales*,	0	1	4
For the *Diem extremum clausit*, after the death of the Sheriffe, whereby Execution is to be returned, *Sur. accompt.*	0	13	4
For the Warrant of Attourney.	0	1	0
The entry thereof,	0	0	8
The Ushers Fees, and poore mans Box,	0	13	4
The Controller of the Pipe,	0	16	8
To him more in regard,	0	3	4
To his Clerk for Summons and in regard,	0	5	0
To the Clerk of the Pipe in part of his Fee,	1	0	0
To the Lord Treasurers Remembrancer,	0	13	4
To the Foreigne Opposer for changing of the green Wax, and making of the scrowle thereof,	1	6	8
To him for allowance of the wages for the Justices of the Peace,	0	18	0

To

	l.	s.	d.
To the Clerk of the Eſtreats for portage of books,	*As you can agree.*		
To the Under-Clerk of the *Pipe* for the like,	*Similiter.*		
The Preſident for the foreign Account,	*Quer.*		
Fee in regard of the Juſtices of Aſſize their Dyet,	10	0	0
To the Attourney for the entry thereof, and the other Petitions,	2	0	0
To the ſaid Attourney for his ordinary Fee for the whole year, *ad recipiendum mandat. &c.*	1	6	8
To him in regard for every Terme during the Account,	0	3	4
To his Clerk in regard,	0	10	0
The Copy of the Sheriffes Seiſures, according to the number of them,	*According to the number of them.*		
Le. Seiſure old,	0	1	0
Le. Seiſure new,	0	2	0
To the Clerk in regard of the ſame,	0	3	4
To the Remembrancers Office for every thereof, and for joyning the Tales of proffers,	0	3	4
On the Lord Treaſurers Remembrancers ſide for the like,	*Similiter.*		

	l.	s.	d.
For allowance of the same Tale of payments of money in the Receipt of the Exchequer,	0	1	4
For the Joyning of the same,	0	0	8
For allowance of the same,	0	1	0
For every day that is given to the Sheriffe for respect of his Accounts,	0	6	8
For Entry thereof,	0	2	0
To the Usher for Proclamation when the Sheriffe is cast out of the Court,	0	2	6
For the *Quietus est*, the making and allowing of the same,	1	0	0
For the Baron his Fee for the taking and allowing of the foraine accounts,	0	6	8
To the same Baron for examining of the Sheriffes Schedule,	0	6	8

The ordinary charge for passing of an Account.

IN primis, for delivery and receipt of three Certificates,	0	1	0
For delivery of the Kings part of the bookes of Extent to the Auditor,	0	0	4
To the Auditors man for a Bag,	0	0	6

For.

	l.	s.	d.
For a warrant of Attourney,	0	0	8
To the Teller for Receiving of the money, and for making a Bill thereof,	0	0	4
To the Auditors man for allowing of the Certificates,	0	1	6
To the Auditors man for engrossing of the Accounts,	10	4	0
To the Barons man for receiving and allowing of the Warrants of Attourney,	0	2	0
For entring of the Account on the Kings Remembrancers side,	0	1	0
For the like entry with Master *Smith*,	0	1	0
For joyning of their two *Tales*,	0	0	8
For entring of the *Quietus est*,	0	2	0
For the *Quietus est*,	0	3	4
The Attournies Fee,	0	3	4
Summe Total. is about	0	18	0

And thus much for the *Exchequer*.

The Sheriffes Fees doe next offer themselves in manner following.

FEES
Belonging to SHERIFFES.

	l.	s.	d.
IN primis, for the returne of every *Cepi Corpus*,	0	0	4
For the returne of a *Nihil*, or a *Non est inventus*,	0	0	4
For returne of a Proclamation,	0	1	0
For the return of a *Venire facias*,	0	1	0
For the return of a *Habeas Corp.* or *Distringas*,		2	4
For every name returned outlawed,	0	0	4
For making a Warrant upon a Writ, if it be directed to the ordinary Bayliff, then for every name,	0	0	4
If to a speciall Bayliffe, or Bayliffes, then for every name,	0	2	0
For the Arrest of every Defendant,	0	1	0 *Payable by the Plaintiffe.*
For making the Bond wherein the Defendant is bound with two sureties for his appearance at the return of the Writ, and in the Court named in the Writ,	0	0	4

For

	l.	s.	d.
For a Copy of the Warrant upon the Writ,	0	0	4
For a *Replevin* or *Replevit* in the Shire,	0	2	0
For the returne of a *Recordare*,	0	0	4
For the returne of an *Accedas ad Curiam*,	0	2	0
For the returne of a *Distringas super vic.*	0	2	0
For the allowance of a *Supersedeas*, if it be after the return of the Exigent,	0	1	0

For the executing of a Writ to enquire of Waſte.
Alſo to enquire of Dammages,
Alſo to execute a Statute,
Or *habere facias ſeiſinam*,
A Writ of Right,
De partitione faciend.
For removing the Over-charge of Common of Paſture,
Enquiry upon an *Elegit*,
Writ of forcible entry, or holding with force, whereupon the party amoved is to be reſtored to his poſſeſſion,
Execution of a Judgement, *ſuper brev. de dote.*
And the like.

The Sheriffe hath for theſe, as you can agree with him

For

	l.	s.	d.
For the ſerving of an Execution, there is a generall Rule, that hee ſhould be allowed according to the rate thereof in poundage, —	*See the Statute of Elizab.*		
For the Returning of a *Mandavi ballivo*, — — — — — —	0	1	4

But unleſſe I had been thrice an Under-Sheriffe, it were impoſſible for me to ſet down all his Fees plainly and honeſtly: Therefore I leave the reſt to offer themſelves unto you, wiſhing it to be ever in meliorem partem; *and for your benefit and credit.*

FEES



FEES
Belonging to the CLERK of the PEACE and his Office, now follow.

FIrſt, it is to be underſtood, that heretofore the *Clerk* of the *Peace*, being onely Clerk under and unto the *Cuſtos Rotulorum* of the County, was wont to have wages yeerly of the ſaid *Cuſtos* for his ſervice.

The *Clerk* of the *Peace* is to make out all the Writs of warning, of all ſuch perſons as are to give attendance at the Seſſions of the Peace, to be kept at ſuch place, as the Juſtices doe appoint and agree upon.

And at the place and time appointed for the Seſſions, the Clerk doth firſt read the Commiſſion of the Juſtices, and then the Sheriffe of the ſhire doth returne foure and twenty of every hundred in the County, of which there is one Grand-Jury for the body of the ſhire drawne forth;

forth; and this is called the great Enqueſt.

And when the great Enqueſt is ſworn, one of the Juſtices giveth the charge unto them, whereupon they ſhall enquire.

After the charge given and ended, they doe depart from the Barre, to ſome roome in ſome houſe near thereabouts, where they may be conveniently together.

And to them then and there are brought all Bills of Felony, Treſpaſſe, Ryots, or other miſdemeanours and offences given them in charge to enquire of.

And if the great Enqueſt finde any of the ſaid Bills or preſentments to be true, and the parties themſelves who are therein found faulty, or guilty, be abſent, ſo that they cannot be quitted or puniſhed for the preſent; then, and in ſuch caſe, the Clerk of the Peace is to make forth againſt them three *Capias's*: and an Exigent to come in, to traverſe the preſentment, or to ſubject themſelves to the Cenſure and Doome of the Court, &c.

When the great Enqueſt finde the Bill true; they write on the back-ſide thereof, *Billa vera*: but in caſe they cannot finde it true for want of ſufficient Evidence, then they write on the back-ſide thereof, *Ignoramus*.

If it be found, then the Clerk is to make forth Proceſſe (as aforeſaid:) but if the Jury finde it not, then farther proceeding is not to be had thereupon.

If

If the party ſo indicted be preſent, if it be in caſe of Felony, &c. hee may be forthwith arraigned before the ſaid Juſtices, who are to proceed upon him farther, as the Law in ſuch caſe provideth.

If hee be not preſent, nor attached, but at liberty till he be outlawed; then after ſuch *Outlary*, every Acceſſary to the felony may be arraigned and tryed, but not before.

For other offences of inferiour nature, the party indicted is to come in to make his Fine at the diſcretion of the Juſtices, or two of them at the leaſt, whereof one muſt be of the *Quorum*, unleſſe that before that time the party can get the Indictment to be removed by *Certiorare* into the *Kings Bench*.

And if it be ſo removed thither, then the party muſt either there traverſe it *cum effectu*, or elſe compound with the Juſtices of the ſaid Court for the ſame.

	L.	s.	d.
The Fees which every perſon ſo indicted is to pay at the Seſſions,	0	2	6
Whereof to the Crier and Marſhall,	0	0	6
And to the Clerk of the Peace,	0	2	0
And in caſe where a forcible entry, or forcible holding is found before the Juſtices, or ſome of them, the *Clerk* of the Peace is to make a Writ of Reſtitution, directed to the Sheriff, to put the party amoved into the poſſeſſion; for which his Fee is —— ——	0	6	8

	l.	s.	d.
Item, for every Warrant of the Peace,	0	2	0
Item, for every *Supersedeas*,	0	2	0
Item, for every Warrant of good Abearing,	0	2	0
Item, of every person indicted of Felony, and thereof acquitted,	0	2	0
Item, for every person acquitted upon other Bills,	0	2	0
Item, upon Removing of every Indictment by *Certiorare* into the *Kings Bench*: For the allowance of the said Writ,	0	6	8
Item, for every Writ at the suit of the party upon a Traverse tendered,	0	2	0

Some other few Fees there be upon matter within the compasse of the Commission of the Peace, which time may enable me to adde: But for the other Fees which the *Clerk* of the Peace doth take in civill matters; as for Licenses of Maltsters, Hyglers, &c. because he is onely *Clericus Clerici Rotulorum pacis*, I understand not how hee claimes those Fees in civill causes.

And for the Licence and Bond of Victualers given upon Licence,

The

The Fees are uncertaine, for in ſome Counties the whole charges ſtands the Victualler in 6. ſhil. in ſome 7. s. and in ſome 8. s. *viis & modis per annum* yearly. And the Victualler licenſed *de novo*, in ſome places payes more then the older Victualler. *Fee uncertaine.*

Note withall, nevertheleſſe, that the Victualler is the beſt Candle-rent Tenant that the Clerk of the Peace hath: And therefore I dare truſt them together, for I know not where I can better leave him.

The Clerk of the Aſſize holds the next place for taking of Fees, (viz.)



CLERKE of the ASSIZES FEES.

(viz.)

	l.	s.	d.
IN primis pro querela, —— ——	0	2	0
Item, pro pl. in Banc. seu in Assis.	0	2	0
Item, pro capiend. Assis. super exit. ex utraq; parte, —— ——	0	2	0
Item, pro intrati. inde in Assis.	0	2	0
Item, pro intratione Non pros. pro Querente, —— —— ——	0	2	0
Item, pro quolibet bre. secundum longitudinem ejusdem, —— ——	secundum longitudinem.		
Item, pro quolibet Adjor. in com. Banc. prout concordare potestis, ——	As yee can agree.		
Item, pro quolibet Adjor. ex utraq; parte, si dies dat. sit utriq; parti, ——	0	2	0
Item, pro quolibet Warr. Attornat. —— —— ——	0	0	8
Item, Quer. in qualibet Assis. de seisin. capt. tertia pars ex tertia parte damnorum, —— ——	Ratabiliter.		

Feod.

	l.	s.	d
Fiat. de Recend. de Nisi prius.	0	0	6
Item, pro deliberat. ejusdem in Curia.	0	6	0
Item, de Quer. si Def. cogno. actionem.	0	2	0
Item, de Def. si Quer. non vult prosequi.	0	2	0
Item, pro qualibet privat. Verdict.	0	8	8
Unde Fastic.	0	6	8
Item, de Defen. pro indors. cujuslibet Record. & Informat. ubi plit.	0	4	4
Item, pro qualibet Warrant. Attor.	0	0	8

And thus farre my present Collations extend for the present, touching our Clerks of the Assizes their Fees.

The charge of proving a Will followeth.

THE

The Charge of proving of a WILL in the ARCHES, the Inventory being forty pounds, and not above.

	l.	s.	d.
Imprimis, the Proctors Fee and *Prox.* for proving the Will,	0	5	8
Item, the Seale and *Probate* of the Will,	0	1	8
Item, for Regiſtring of the ſame,	0	3	6
Item, for ingroſſing of the Will, if it be but ſhort,	0	1	0
Item, for ingroſſing of the Inventory, and exhibiting of the ſame,	0	3	4
Item, for the Regiſters hand to it.	0	1	0
Summe total.	0	14	2

Generally for Probate of Wills, and the charge thereof according to the rate of the Inventory, ſee the Statute in that caſe, under that Title eſpecially provided.

If the Officers whom it concernes, can be perſwaded that it was provided for them: *hinc oritur quæſtio.*

COURT

COURT OF WARDS.

Instructions to sue forth a Lunatick.

FIRST, you are to make suite to the Master of the Court of Wards for the Custody of him whom you desire to have; not without much care, that you use a friend worthy your trust in this behalfe.

When you have a promise thereof, you must present your petition to him that is Master, desiring that he will be pleased to grant you a Commission for the finding of the same Lunatick: which Commission is to be directed to the Feodarie of the County where the Lunatick abideth, and two others at the least, whom it shall please the said Master to appoint.

When you have order for the Commission (as aforesaid) then you are to goe to his Majesties Attorney of the Court of Wards with the order, and he will thereupon make you a Warrant for the drawing up of your said Commission.

This

This Warrant you muſt carry to the proper Clerk, who is to draw your Commiſſion, which he upon ſight of the Warrant, will accordingly doe.

Fee to the ſaid Clerk for the ſaid Commiſſion, ——— l. 5 — s. 16 — d. 0

Note, that when you procure your Order from the Maſter, you muſt have a ſpeciall care to ſee that his Secretary doe Regiſter your name for the ſaid Grant, in the Book of Remembrances of this nature, leſt it ſhould be forgotten, and withall it will not be amiſſe, that you uſe means to make the ſaid Secretary mindfull of you in your abſence.

When the ſaid Commiſſion is executed, and the Office found thereupon, the ſame muſt be delivered into the Court of Wards, and hee that delivereth it, muſt be ſworne upon the delivery, that he received it from the Commiſſioners, and that in ſuch manner as he doth deliver it, being unaltered in any point.

Fee for the ſaid Oath, *foure pence.*

Then it is to be delivered into the Office at the *Temple*, from whence it is to be ſent over to the *Petty bagge*, where the Clerk will make you out a Copy of the ſame Commiſſion, and Inquiſition found upon it, which you muſt carry backe to the Office of the Court of Wards; and then the chiefe Officer there, or the Auditor of the Court will make you a Schedule by, and out of the ſame Office or Inquiſition ſo found

To

To this Schedule you are to get the hand of the Master of the Court; And that being obtained, you are to bring the said Schedule so signed to the Officer, who is to make your Indentures of bargaine thereupon, which he, upon sight thereof, will perform accordingly.

Then you are to carry the said Indentures to the Master of the Court, who will set his hand to one part of the same, and you that have the Grant of the said Lunatick, must set your hand and Seale to the other part. And the part which you are to have, must be heroupon sealed with the seale of the Court.

But before you have your part, you must seale to the Kings part, and must also finde two Sureties to be bound with you, that you shall truely account once in every yeer to the Auditor of the Court for the profits of the living of the said Lunatick, and to answer the stock and state of the said Lunatick, if he shall chance to die, or recover his former health.

And if the partyes who should be bound with you, be not in Town, then you must have a Commission directed to foure such in the Country as you will nominate, to see and certifie the signing and sealing of your said Sureties to the said Bond.

This Commission and Bond must be returned into the Court of Wards, who delivers it back to the proper Clerk or Offices, whereupon you shall have your part under the hand of the Master

of the Court, and the Seale of the said Court.

Then must you Inroll your part of the said Indenture, so signed and sealed in the Auditors Office: And so you have made an end, &c.

And you may conceive how severall Fees doe arise upon every severall passage aforesaid.

Instructions to passe a Ward.

IN *primis*, you must make meanes for the obtaining of a Ward, as in case of a Lunatick aforesaid.

When you have got the promise and order for it from the Master of the Court of Wards, you are to goe to the Kings Attourney of the said Court, and use meanes unto him for a Commission to enquire and finde the Ward, and a Tenure for the King; whereupon you may have a Warrant from him to leade such a Commission.

When you have that Warrant, and thereupon your Commission; you must get that Commission, to be by the proper Clerk to whom it doth appertain, directed to the Feodary of the County, and two such others as you shall nominate and appoint.

When this Commission is sped and executed, and the Tenure found for the King, which doth consequently prove the ward, you are to return this Commission into the *Petty Bagge*, and there to take a Copy of it, which you are to deliver to the Clerk to whom it belongs in the Office of the Court

Court of Wards; and hereupon he will make you forth upon sight thereof a Schedule of the value of the Land.

Then you must carry that Schedule to the Secretary of the Master of the Court, to the end that he may procure his Masters hand to be set unto the same, and the Office for it, with the Wards exhibition, and the names of the partie, or parties, which are to have the Ward: All which must be likewise set downe.

And when you have the said Schedule so signed, thereupon the Indentures of the grant are to be drawne up, to the one part whereof, he or they that have the Ward, are to Seale and signe; and to the other, the Master of the Court doth use to subscribe his hand, and then the Seale of the Court is affixed thereunto.

Now if the parties who have the grant, have not also their Sureties who are to undertake for them in this behalfe, in bonde, so that they may have them into Bond with him, with condition of making a true Accompt, and not doing of any waste, &c. Then there must be a Commission procured to foure such persons as the Grantee or Grantees shall name, to attend and see the Sealing and delivery made by him, or them, and his, or their Sureties, which the Commissioners must certifie and send up under their hands and Seales, attested with some Witnesses to the same.

And this must be delivered into the Office of the said Court, to the proper Officer, with and

upon Oath to be made, that it is delivered in such manner as it was received from the Commissioners themselves unaltered, &c.

Thereupon you shall have a Bill for the receiving of the exhibition thereof, and according to the Ancient forme of practice, that Bill was wont to be then signed by the Kings hand; by the procurement of the proper Clerke of the Office.

And when the same is so signed, it does passe through the severall Seales, and at the last under the great Seale of *England*, which course I understand not to be altered as yet: howsoever I may suspect, in regard of the many new Instructions which have issued of late times, for the ordering of the affaires of this Court, that some small difference may *intercedere*, &c.

When your said Patent is so sealed, you are to deliver the same and the Schedule of the value of the Land to the Auditor of the Court, who is to see that the same be forthwith enrolled.

And thereupon the Auditor will give order to the Feodarie of the Shire, to pay you the exhibition yeerely, &c.

The

The charges of obteining a Ward, doe follow.

Feod. sequuntur.

	l.	s.	d.
Imprimis, for the Commission to finde the Tenure for the King, &c.	0	15	0
Item, the Returne therefore to the Clerk of the Petty-Bagge.	0	16	0
Item, the Copy of the said Office is eight pence the sheet.	0	8	*pence the sheet.*
Item, to the Clerk of the Petty-Bagge for examining of the same.	0	2	0
Item, for making of the Bargaine.	0	6	0
Item, to the said Officers Clerk who maketh the same.	0	14	4
Item, for making of three Obligations.	0	18	0
Item, for the Commission for sealing of the Bargain and Obligation in the Country, in case where the party, Granter or his Surgies be not in Towne to Seale.	0	5	6
Item, to Master Attourneys man for the *Affidavit inde.*	0	2	4
For drawing the of *Schedule*	0	6	8
For drawing of the Bill to be signed, and getting of the Kings hand unto it.	0	6	8

To

To the Clerk for writing of the said Bill. ——— 0 — 3 — 4

To him more for entring the same into the Booke. ——— 0 — 2 — 0

To the Auditor for the enrolling of the Patent and *Schedule* of the Land. ——— 0 — 13 — 4 *or rather, as you manage it.*

To the Clerke for writing of the *Schedule*. ——— 0 — 1 — 6

Besides the Copie of the Office. ——— *ut supra*

Thus I conclude with this Court, giving you farther to take in direction, that you examine these with the lateſt Bookes of Inſtructions given and publiſhed in Print for the ordering of this Court; whereby you ſhall the better diſcerne the alterations, if any be.

FOr the Ideot, I had almoſt forgot him; However the matter is not great: For it is but a fooliſh buſineſſe when all is done.

You have a faire example of a Lunatick before your eyes, and therefore I ſhall only need to give you this monitorie inſtruction touching an Ideot: That you be aſſured that your ſelfe is ſomewhat the wiſer man before you goe about to beg him, or elſe never meddle with him at all leſt you chance to play at *Wanny dandy*, which is the Guardian, or which is the foole? and the caſe alter è *Converſo ad Converſum*? Pray let us have no *Plus minus* in the matter. And ſo much for the Ideot.

THE

THE COURT OF PARLIAMENT.

I should say somewhat touching that Great Court of Record, The Parliament. But the place is so farre removed from my sight, that I cannot presume a certaine representation, with these weake helpes of eying these mysteries. I make bold by way of explanation, Introduction, and deduction, of Sir Thomas Smiths *Common-wealth, to deliver this onely.*

YOu shall understand that all the Law of this Land which is Positive, Acts of *Parliament* doth consist either in Statutes, or, *Proclamations.*

For the Acts of Parliament, publique or private, They shall keep and remaine in the Custody of the Clerke of the Parliament; Howsoever (as I finished you in the Search of Records) that they may, or at least should be, in the Chappell at Westminster, Rolles there is, and most of them are brought downe thither by Williams, *Cowdam, &c.*

These

These Acts (as you may read) are made and established by the King, the Peers and Commons of the Land, so stably and sanctedly, that they be taken for Law.

And that you may the better conceive, what are the businesses, what the practice, and what consequently the Records of this Court, I will briefly recite the very words of Sir *Thomas Smith*, to that point onely. (*viz.*)

The Parliament Abrogateth old Laws; Maketh new; Giveth order for things past, and for things hereafter to be followed; Changeth right and possessions of private men; Legitimateth Bastards; Establisheth formes of Religion; Altereth weights and measures; Giveth forme of Succession to the Crowne; Decideth of doubtfull Rights and Titles, whereof there is no Law already made; Appointeth Subsidies, Tailes, Taxes, and Impositions; Giveth most free pardons and Absolutions; Restoreth in Blood, and Name; Naturalizeth Aliens borne out of the Kings Allegeance; and to be short, All that ever the people of *Rome* might doe either in *Centuriatis Comitiis*, or *Tributis*, the same may be done by the Parliament of *England*. And so much to the current of this Realme.

It is evident, that this is the highest Court of this Realme, because the Authority of it is absolute, and bindeth all matters soever, for that they are all parties and privies themselves, by way of Representation, &c.

Unto

Unto this High Court doe come some,
1. By reason of their Tenure.
2. By vertue of Writ.
3. By vertue of Office.

There doe come by reason of Tenure these; (*viz.*)
Archbishops,
Bishops,
Abbots,
Priors,
Dukes,
Marquesses,
Earles,
Barons.
Per Tenur.

These use to be summoned to appeare by the space of forty dayes before the Parliament.

They who doe come in by Writ are these; (*viz.*)
Knights of the Shires,
Burgesses,
Citizens of Cities,
Barons of the 5. Ports,
The Kings Counsell.
Per Brev.

There doe come hither also by Writ directed to the severall Deanes, and Arch-deacons of this Kingdome:
Two severall Proctors of the Clergy, for every severall Deaconry, and Archdeaconry:
per brev.

These Proctors of the Clergy, be elected by the Clergy also.

And every of these do bring with him two Warrants whereof he keepeth one by himselfe, and the other he enrolleth with the Clerke of the Parliament.

From hence some have gathered an opinion, that sometimes heretofore the Convocation house hath been a member or part of the Parliament house.

But it appeares to be otherwise in the Case of *Philpot*, who being questioned for Heresie, and certaine hereticall words by him spoken, did in his answer alleage, That the words so spoken, were delivered by him in the Convocation house, which he held to be a place of freedome and liberty of speech, as being a limbe or member of the Parliament House: which assertion was over-ruled, and the Convocation adjudged to be no member of the Parliament House. For though they come by writ of Sommons to the Parliament; yet they have no power over the Laity, but only authority to change the Spiritualty; Or to make Constitutions Provinciall, as Holy-daies, Fasting-dayes, and such like; And an Act of Parliament may passe without their consent, privity, or interposition in any manner of wise, &c.

There do come hither, by reason and vertue of Office, these: (viz.)

1. The chiefe Cryer of *England*.
2. The chiefe *Usher*.
3. The *Chancellor*
4. The *Treasurer*
5. The *Chamberlain*
6. The *Barons*
7. The Justices of either *Bench*.
8. The Steward of *England*.
9. The Porter.
10. Groomes.
11. And all tyed by service to be here done, &c.

of the Exchequer.

The Stewards Office hath been to place the Lords there.

The Porter hath used to see that there be but one dozen at which to goe in and out.

And every one of the above named Officers, hath had his severall charge respectively.

The Allowance of the Knights, Burgesses, and Barons of the Cinque-Ports follow:

(viz.)

EVery Knight of the Shire hath used to have the Allowance of a Mark by the day, to be paid by the County whereof he is Knight; and this may be levied by Distresse, &c. — *Knight:* 13 s. 4 d. *per diem.*

Burgesses and Barons of the Cinque-Ports. — These have not used to have *per diem* above x. s. *per* piece for expences.

And for the leavying of this, they have not used to Distreine, but have tooke foorth a writ under the Great Seale of *England*.

The Writ for the Barons of the Ports, is directed to the Warden.

The Writ for the Burgesses, is directed to the chiefe Magistrates of the City or Towne Corporate for which they are Burgesses.

And the bodies for whom the forenamed persons are imploied, must pay the fine for their default, &c.

As,	l.	s.	d.
For the first day wherein the Burgesse shall be called, and appeares not, his Borough shall pay	0	10	0

If

	l.	s.	d.
If at the second day, the Knight of the Shire doe not appeare, his Shire shall pay	100	0	0
If at the third day, a Baron of the Cinque-Ports shall not appeare, those of the Cinque-Ports shall pay	66	6	8
If at the fourth day, the *Proctor* of the Clergy doe make default, his Bishop shall pay	100	0	0

And if all the Bishops, and all the Lords Spirituall and Temporall bee absent, having lawfull Summons; Many are of opinion that the King with his Commonalty may proceed alone.

The officers in Parliament { The Speaker. / Two Clerkes.

Of which Clerkes one is for the Upper House, and the other for the Lower House.

This Speaker he doth commend and preferre the Bils exhibited into the Parliament.

The Speaker is usually appointed and nominated by the King, though accepted by the House: And the Lord *Keeper* or Lord *Chancellour* useth commonly, *pro forma*, on the first day of a Parliament to speake to the House, that they make choyce, and name one to bee their Speaker, &c.

The Clerks are *Custodes Rotulorum Parliamenti*.

Touching their Fees: *Non altum sapimus*, &c.

And thus I conclude with the Parliament.

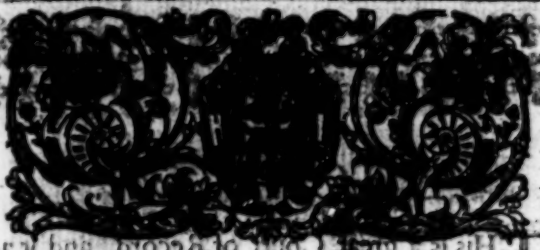
For

For the other part of Positive Law, which does consist in Proclamations: I may onely say what they are, and what is the power of them, according to the common received opition; and farther I intend not any speculation into them.

Proclamations are, where the King and his Councell thinke fit and expedient to publish any thing as a Law.

The effect and power of them, as also the pain of him that breaketh the same, you may read in divers Treaties upon this Subject; In all which I finde this generall consent, that if the Ordinance or Proclamation so made, bee in supplement or Declaration of a Law that hath been formerly made and been good, It is to be obeyed as a Law, and the breaker thereof is to undergoe the paine of him that breaketh a Law and his Allegeance, &c. So did those *Provisions Merton* attaine, and to this day doe hold the name and reputation of the Statute of *Merton*, &c.

Dixi.



The Office of an ESCHETER:

is ſet forth in theſe few lines following:

Regia demandunt brevia Eſchætoribus iſta
Cognoſcenda, ſibi Quæ ſint attinſtia denet;
Quorum de ſeſe, Quarum de aliis teneatur,
Per quæ ſervitia tenet, Quantumq; valebant
Terra: Quod die fuit conceſſa: Et hæres
Quiſnam proximior, Quiſve ætatis aborta.

Note.

Where the value of the Lands to be enquired of, doe exceed the value of five pounds *per annum*, there he muſt enquire only by vertue of Writ.

Where the Lands are under that value, he may enquire by vertue of Office, and that Writ.

In every caſe the Inquiſition found, muſt be returned into the Petty *Bagge*, &c.

THE

THE DUCHY *Court.*

THis is a great Court of Record, and it admits Pleas as well reall as personall, as also mixt pleadings, concerning the lands of the *Duchy*.

The Judges here are the *Chancellor* of the Duchy, assisted by his Majesties Attourney of the Court, and two Judges of the common Law, who advise them for matter or question of Law.

The Rolles and Records of this Courts proceedings, are in the custody of the Clerk of the same, to whose Office they doe appertaine.

But the Kings Evidence, Leases, and Grants of the Duchy Land, as well the Possessions and Copy-hold, as Fee-simple, and Fee-ferme, are all in the keeping of the Auditors.

The Auditors of this Court are divers, howsoever two are most principall, one whereof for the Lands of the Duchy on this side Trent, and another for the Lands beyond Trent.

There be divers Surveyors for the Duchy Lands, for the survey of them, but they keep no Record, unlesse it be some models of their owne making.

And so I leave the Duchy, *&c.*

THE

The MARSHALSEY, and *Palace Court of Westminster.*

THe Court of Marshalsey, is one of the most Ancient Courts within this Realme, and is a Court of Record, ordained to determine suites between those that are of the Kings Houle and others within the Virge.

The Judges of this Court, are the Steward and Marshall of the Kings Houle, who have Cognizance of all manner of *Pleas* of trelpasse committed within the Kings House, and within the Virge of the same House; so as either party be of the Kings House: and of all other Actions personall wherein both parties are the Kings Servants.

This Court is weekly contained to entertaine Suitors if any come, which hapneth seldome, in regard there are lately risen some doubts and questions concerning the Jurisdiction of this Court.

The King, in ease of his Subjects living within the Virge, and for a more certaine and speedy administration of Justice to them (in regard of their continuall trouble in the Kings service) by Letters Patents, Dated (*Decimo secundo Julii, Anno sexto Caroli Regis*) hath erected a new Court of Record; stiled, *The Court of the Kings Palace at Westminster.*

The Palace Court of Westminster.

THis Court is weekly kept in the Court-house on Saturday in Southwarke; and may be held in any other fit place within twelve miles of White-Hall.

The Judges here, are, the Lord Steward of the Kings House and the Knight Marshall for the time being, and the Steward of the Court or his Deputy.

The proceedings in this Court, is by Capias, or Attachment, which is to be served upon the Defendant, by one of the Knight Marshals men, who taketh Bond with such Sureties for the Defendants appearance at the next Court, as he will answer for.

And these Proces are to be had at severall places within the liberty of the Court, appointed by the Steward, for ease and readinesse of the parties, which every Minister of the Court or Marshals man can direct you to.

The Defendant upon his appearnce must put in Bayle to answer the condemnation in Court, which if he neglect to doe, the Plaintife may have the Bond taken for his appearance, assigned over to his use.

The next Court after the Bayle taken, the plaintife ought to declare and set forth the cause of his Action, and so afterwards proceed to Issue and tryall by a Jury, according to the course of the Common Law.

In foure or five Court dayes, commonly all your Actions come to Tryall, so the proceedings of this Court is very quick and speedy.

The Actions tryed there, are of Debit, Trespasse, Battery, Slander, Trover, and all other Actions personall whatsoever.

The Fees of this Court I have here set downe, as they are inserted in the Letters Patents.

The Ordinary Fees of the Palace Court of Westminster, to be paid by the Plaintiffe.

	l.	s.	d.
Imprimis, for every Writ or Precept of *Capias*, or Attachment, to the Steward and Marshall.	0	1	0
To the Prothonotary for writing the Writ.	0	0	2
To the Marshals man for executing or serving it.	0	1	4
The Attourneyes Fee upon every Declaration, Issue, *Venire facias*, and, *Habeas corpus Juratorum*.	0	1	8
For the warrant of the Attourney, to the Prothonotary.	0	0	4
For making of every Declaration, and entry thereof to the Prothonotaries Clerks.	0	1	0
For the Fee of the Court upon every Declaration, Issue, and knowledge of satisfaction to the Steward and Marshall.	0	1	4

	l.	s.	d.
For the marking and filing of every Declaration and entry of every satisfaction to the Prothonotary.	0	0	8
To the Prothonotary for entring of every Issue, and every Verdict, and Judgement.	0	1	0
The Criers Fee upon every Issue.	0	0	4
For every Writ of *Venire facias, Habeas Corpora, Distringas Juratores*, And for every other Writ of Execution and others.	0	1	8
To the Prothonotarie for writing of every of them.	0	0	4
For the Return of every one of them to the Prothonotary.	0	1	0
To the Marshals man for executing every *Venire Facias.*	0	2	0
For the executing of the *Habeas Corpora & distringas Juratores* to the Marshals man.	0	1	6
To the Cryer for warning of the Jury.	0	0	6
For every Verdict and Judgement thereupon to the Steward and Marshall.	0	3	4
To the Matshals man for keeping the Jury.	0	1	0
To every Counsellour at Law for his Fee.	0	6	8

To

	l.	s.	d.
To the Cryer for Proclamation of every Jury.	0	0	6
To the Attourneys Clerk for every Bill of Costs.	0	0	8

The ordinary Fees to be paid by the Defendant.

FOr the Knight Marshals Fee upon every Arrest.	0	3	6
To the Prothonotary thereupon,	0	0	10
To the Keeper of the Prison thereupon,	0	0	4
To the turn-key thereupon,	0	0	4
For every Bayle in Court, and every Lil. to the Steward and Marshall.	0	1	4
To the Prothonotary for entring every Bayle,	0	0	5
To the Keeper of the Prison thereupon,	0	0	1
For the Attourneyes Fee upon every Lil. of ille, *Venire facias & Habeas corpora Juratorum*,	0	1	8
For the Copy of every Declaration to the Prothonotary,	0	1	0
For every ille on the Defendants part to the Steward and Marshall,	0	1	4
For every Warrant of Attourney for the Defendant, thereupon to the Prothonotary.	0	0	4

Accidental

Accidentall Fees.

	l.	s.	d.
For every Rule of Court to the Prothonotary,			4
For the drawing of every Declaration, Plea, Rejoynder, Surrejoynder, *Moratur in Lege*, for every sheet to the Prothonotaries Clerk,			4
For the Inrollment thereof to the Prothonotary for every sheet,			4
For every Writ of *Sub Pœna*, to the Steward and Marshall,			4
For the writing thereof, and of every *Decem Tales*, and of every *Retraxit* to the Prothonotary,			6
For the allowing of every Writ of *Procedendo* to the Steward and Marshall,			8
For the entry thereof and of every continuation and for the assigning of an Obligation for appearance on Record, to the Prothonotary,			8
For executing of every Writ of *Scire facias* to the Cryer,			6
For the Copy of every Record to the Prothonotary for every sheet thereof,			4
To the Cryer upon every *non Pro.*			12
For every *Venire facias*, *Habeas corpora*, or *Distringas ad grauces per proviso*, to the Steward and Marshall,			8

For

	l.	s.	d.
For writing the Copy of the Record to the Prothonotary,	0	3	0
For executing thereof to the Crier,	0	2	0
For the returne thereof to the Prothonotary,	0	3	0
For the keeping of the Record and thereof to the Clerk,	0	1	0
For every Writ and every allowance of every Writ of *Certiorari*, Writ of Privilege, *Supersedeas*, and every other such like Writ to the Steward and Marshal,	0	3	4
For the entry of every one of them on Record to the Prothonotary.	0	3	4
For the returne of every such Writ to the Steward and Marshal,	0	3	4
For writing of the returne thereof for every sheet to the Prothonotary,	0	1	8
For the allowance of every Writ of error to the Steward and Marshall,	1	0	0
To the Prothonotary for entry thereof,	0	2	0
For every Writ of *Supersedeas*,	0	2	6
For certifying of Records, to the Prothonotary for the writing of every Roll of Parchment thereof,	0	6	8

For

	l.	s.	d.
For correction of every prisoner in execution to the Keeper of the prison, ——	0	0	8
For the Prothonotaries Clerks fee thereupon, ——	0	1	6
To the Turn-key thereupon, ——	0	1	0
For the Prothonotaries Clerks fee for the Entry of the cause of Suit and Release of every prisoner, ——	0	0	4
Upon every Obligation of appearance of the prisoner to the said Clerk, ——	0	0	6

Amerciaments due to the King in the said Court.

OF every Defendant for denying his Act, ——	0	1	0
Of every Plaintiffe *pro falf. Clame.*	0	0	6
For every Defendant in *Misericordia*, ——	0	1	0
Of every party *forecept, per Judic. Curia*, for his fine to the King, ——	0	1	0

THE

THE TABLE.

Abatement of the Writ.

On want of probate of the will by Executors. *pag.* 69
For variance. 69
Misnosmer. 69
By entermarriage pead the Writ. 70
Recusancy, Aliennee, Excommunication, Outlarie, Disabilities to abate the Writ, or a Processe. 71
Quare Impedit shall abate, if the Patron die before a Plea put in. *ibid.*

Accompt.

Three Writs of Accompt. 65
Against whom it lyeth, *& è contr.* 65,66,68
Wager of Law in it, *& è contr.* 66
By two Merchants, or two Jointenants one against the other *ib.*
When Auditors are to be assigned upon Accompts. 67
Pleas upon Accompt. 68
Against *Guardian* in Socage. *ibid.*
Against a stranger as Guardian in Socage. *ibid.*
Grantee of a Lunatique is to accompt every yeare for the profits, and to answer the stock. 114

Action upon the case.

Against the Sheriffe if no Baile be taken upon appearance, upon Arrest. 11
Against an Attorney who pleads not in time according to Instructions. 42
Upon *Assumpsit*, lyes not but upon a consideration. 137
Upon *Assumpsit*, to forbeare suit. *ibid.*
When in Action upon the case a Request must be averred and proved. 138
If the Consideration precede the promise, *Qu.* if good. 138,143
For a Marriage portion. 139
For scandalous words. 139,140
De Scandalis magnatum. 140
Where the defendant in an Action upon the case is to traverse *Absq; hoc, &c.* *ibid.*
For riding a horse lame. 141
Against a Taylor for spoiling a garment. 142
By the Master against his servant, *& è contr.* 143,144
Upon a mutuall contract. 142
Against a common carrier. 141, 143
In an Action upon the case upon

a Statute, the Statute must be recited. 143
Where *Non Assumpsit* pleaded, is a confession of the consideration. *ibid.*
Against a Sheriffe for an Escape. 143,144
By a Parishioner against the Parson, if hee carry not away his tithes in convenient time. 144
Against an execution upon *Assumpsit* of the Testator. *ib.*
Against an Inn-holder for goods stollen. 145
For Negligence. 146
For taking excessive Fees. 146
For stopping of Lights. *ibid.*
Against Husband and Wife for words spoken by the Wife. 148

Actions personall and reall.

Where to be layed in any County, and where to be locall. 5

Amendment.

Not good without leave of the Court. 11
Matters of forme amendable, but not matters of substance. 44
Matters of Mistake, and Negligence of a Clerk to be amended, not matters of Ignorance. 44,45
Amendment after a Demurrer put in. 229
The defendants Attorney in *B. R.* may amend or alter a plea after it is delivered over. 370

Amoveas manum.

To discharge Lands seised upon the reversall of Outlary. 27

Arrests.

Before money be due. 14
Where the party arrested shall be discharged by *Supersedeas*, where not. 186
In trespasse, and declare in Trover. 149

Attachment.

Of Priviledge. 13
Where must be speciall Bail. 14,29
For not obeying a Rule in Court. 48
Against Husband and Wife for the Wifes not answering. 177
For disobeying of an Injunction. 193
Must be entered into the Register. 175
Against a defendant who departs before he is examined upon Interr. in the Star-Chamber. 382

Annuity.

Defined. 61
Election to charge the Lands or the person. *ibid.*
Election where it is a bolve. 62

Against

Against whom a writ of Annuity lyeth. 62,63
Lyes not by Prescription. 62
In what Countie it is to be brought. 63
Lyeth not for Arrerages only, but for the Annuity and the Arrerages. ibid.
Recovery and Judgement in a Writ of Annuity. 64
Grantee by the King. 63

Affidavit.

Of serving of a *Sub pœna*. 172
Touching the merits of the Cause not to be allowed. 193

Answer in Chancery.

Causes for delay of putting in answer. 173, 174
By *Dedimus potestatem*. 174, 381, 382
Attachment for want of answer. 174, 175, 176
In Vacation time when needfull. 175
A speciall *Dedimus*, to Answer, Plead, or Demurre, must be upon motion to the Court. 176
After the Husbands death, the Wife may make a new Answer. 178
An insufficient Answer within what time it is to be amended. 229

Attorney

Is to demean himself in his clients cause for the best advantage of his client. 8,9,10,11
When he may give a Judgement by *Nonsum informatus*, 15
Must be carefull to see the Issue entered, and Records engrossed. 20
Is not to be arrested upon a *Capias*, but is to put his hand to an Appearance, which if he refuse, he is to be fore-judged the Court. 28
The defendants Attourney is not to plead untill the Declaration be perfected. 9
The plaintiffes Attourney to be present at putting in of speciall Baile. 13
Hath a Priviledge to be exempt from payment of Fees. 30
Cannot be plaintiffe *in ejectione firmæ* to save his purse by using his Priviledge. ibid.
Shall not have full Costs. ibid.
Divers Priviledges of an Attourney at Law. 30
Who should be Attourneys. 42
Should be tender how they advise their clients to wage Law. 53
Ought to be vigilant in calling of Essoines and entry of *nè recipiatur*. 116

Averment.

In Action upon the case. 137, 138

Baile.

Where the Baile shall pay the debt and costs. 13
Speciall Baile. 14, 29
Where upon *Exigent*, where not. 8
The manner how Baile is to be taken. 12, 370
Discharged. 13
In the Exchequer must be taken in Court. 394

Bill in Chancery.

When to be put in. 170
The proceedings thereupon. 171
Of *Revivor* where, and where not 177, 178, 179
Dismissed, because the sirit not for the value of 10. or 40. s. lands *per annum*. 179
Dismissed for want of Replication. 180

Capias.

To arrest, must have an Originall preceding. 4
Must not issue forth till the Originall be returned. *ibid.*
Fifteen dayes for Returne. 4

Challenge.

When to the Jury. 17
When too late. 22
Causes of Challenge to the Array are in respect of indifferency, or default in the Sheriffe. 73
To the Polle and the Causes. 73, 74, 75, 76
If the party give any thing to a Juror to give his verdict. 71
Fellow-servant, a challenge for favour. 75
None can take that challenge to the Polle, which hee must have had to the Array. *ibid.*

Conspiracy.

Not maintaineable, but where two persons conspire. 76
Upon Indictment and prosecution, it must be layed to be *maliciosa*. *ibid.*
Against two, upon Not-guilty pleaded, if one be found guilty, the other not, the plaintiff cannot have Judgement. 77
Not maintaineable, where the plaintiffes life was not in danger. *ibid.*
Not maintaineable against the husband and wife alone, because but one person in Law. *ibid.*
The writ shall not abate by the death of one of the defendants. *ibid.*

Covenants.

Reall and personall. 78.

By

By Executors. 78
Is alwaies in writing. 79
The Proceſſe in a Writ of Covenant. 81
The plaintiffe may aſſigne divers breaches in a Writ of Covenant; but in debt upon a Bond for performance of Covenants, but one breach. 83

Coſts.

To be paid upon Amendment. 11
Upon a Contempt. 14
Upon a Writ of Error. 46
In Rebellione ſumus. 121
For not performance of his Law. 51
For not filing a Bill. 171
When to be paid to the defendant for not appearing. 172
For vexation after a Demurrer, or Diſclaymer. 179

Contempts.

Attachment upon an *Affidavit* for a Contempt. 43
The proceedings for the proving of a Contempt. 194
Where Contempts ſhall be ſuſpended. 195
Bonds entered to anſwer Contempts. 377
To be paid for exhibiting a Bill under 10*l.* value. 191
For not anſwering, and how to be incereaſed. 210,211

Chancery.

Officina ſemper aperta. 175

Commiſſion and *Commiſſioners.*

Where they have power onely to take an Anſwer. 176
To examine witneſſes, when to be carried by the defendant, *& è contr.* 180,184
Notice to be given 14. dayes before it be executed. 181
Where a Commiſſion ſhall be *ex parte.* 181,183
Exceptions to Commiſſioners. 184,185
Difference between a joynt Commiſſion, and one *ex parte.* 190
No new Commiſſion, where the Commiſſioners on both ſides ſit, and one party doth not examine. 213
Where a Commiſſion is grantable, where not. 213
For charitable uſes. 217. and the proceedings thereupon. 217, 218
Of Sewers. 218
Of Bankrupts. *ibid.*
Of Delegates upon Appeale. 219.

Counſellors.

To be carefull not to move againſt the conſtant Rule of the Court. 232,234
Not to put their hands to Bills not

not drawn, or perused by themselves. 233
Not to move in *forma pauperis* without a warrant. 234

Courts.

Of Common-Pleas.
Of Chancery.
Of Requests. 362
Of the Provinciall Councell of the Marches of Wales. 364
Of the Provinciall Councell of Yorke. 265
Courts of the County Palatine at Chester, Lancaster, Durham 366
The Chancery of London. 367
The Exchequer Chamber at Westminster. 366
The Court of Kings-Bench. 368
Courts in London. 372
Court of Starre-Chamber. 376
Court of Exchequer. 392
The Dutchy Court. 428
The Marshalsey. 429

Damages.

Upon a Writ of Enquiry of Damages notice to be given. 123

Declaration.

If arrested in debt, the Plaintiffe cannot declare in trespasse. 15
Time for to declare in Courts 370

Debt.

Upon the Statute against Witnesses, who appeare not upon *Subpœna ad testificand'*. 21
Where in the *Detinet*, where in the *Debet*. 70
Upon a *Mutuatus*. 83
Against the heire. 83, 91
Against the Husband for the debt of the Wife. 84
Against the Ordinary. 83
For Rent. 84, 85
By the Reversion. 85
Lyes not upon a Bond or penall Bill till all the dayes be past. 85
Upon a Recognizance. *ibid.*
Upon an Arbitrament. 85, 93
By Attourney for his fees, but not by a Sollicitor. 86, 87
Against the Sheriff upon Escape. 86
Upon an *emisset*. 87
Upon a Judgement had in Court of Record. 89, 98, 99
For an Amercement in a Court Baron. 90
Executors chargeable in debt upon a Bond, though no Executors be mentioned in the Bond. 92
Brought by Executors. 93
Where *Non est factum* is a good plea. 94
Illiterate, pleaded. 95
Speciall pleas in debt. 95, 96, 101
Upon a contract for the pasture of a horse. 97
Where the Statute of Limitation is

is pleadable in debt. 98
By a Parson for his tithes, &c. *ibid.*
Maintainable upon penall Statutes. *ibid.*
Where a debt is payable upon demand, & è contr. 101
Not maintainable by Executors before probate. *ibid.*
A Release sealed and delivered pleaded in barre of debt. 102

Detinue.

Where the Action lyeth. 102
Must be brought of a thing certaine. *ibid.*
For Evidences in a Box. *ibid.*
Where the defendant shall plead the generall issue, and where the speciall matter. 104
Judgement in *Detinue*. *ibid.*
The Declaration must be *Sum' suit, & non Arrisabitur suit.* 105

Demurrer.

Must be under Counsells hand. 16
Judges must have books of Demurrers. *ibid.*
Must be put in before the last day of the Terme. 48
Must be put in in person. 176
Within what time to be argued. *ibid.*
Not to be referred. 205, 228

Depositions.

Taken in other Courts when they shall be read. 213

Decrees.

Must not be against an expresse provision by Act of Parliament. 202
Bind not parties who were not served with Process *ad audiendum*; and where they shall bind. 204
Made in other Courts where they shall be read. 204

Distresse.

Must be for rent and services in the day time. 123
May be for Damage feasant in the night. *ibid.*
For Amercements in an Hundred Court. 124
Where the Plaintiffe must in his declaration shew the property of the beasts to be in the defendant. 124

Dismissions.

What suits are to be dismissed upon motion to the Court. 208
When a dismission is to be prayed and had. 208, 209
For double vexation. 209
For want of proof of suggestions upon a *Certiorari*, within 14 dayes. 208

Ejectione firmæ.

Who is a right ejector. 118, 119, 120

Where

Where notice is requiſite upon an ejectment to the *terre* tenant to defend the title. 119
The form of the Writ. *ibid.*
Againſt whom damages ſhall be recovered. 120
Coſts in *ejectione firme.* 121

Election.

In a Writ of Annuity, for Annuity, or a Rent by diſtreſſe and annuity. 62

Elegit.

Elegit after Judgement, one or ſeverall *Elegits.* 20

Enfant.

Muſt ſue by *prochein amye*, and defend by *guardian.* 89
What Acts ſhall bind him. 87, 88, 89

Error.

Superſed' upon a Writ of Error. 22
Error upon a *ſcire fac'* brought. 33
The maner of the proceedings in the Writ. 45
What ſhall be a ſufficient Error to reverſe a Judgement. 47

Eſſoyne.

In what Action a man may caſt *Eſſoyne.* 112, 114, 115, 116
So many defendants as there be, ſo many ſeverall times they may be eſſoined. 114, 115
The heire upon a Summons returned is to caſt an *Eſſoyne*, If not, a *diſtringas* iſſues againſt him. 117

Eſcape.

Againſt the Sheriffe. 31

Executors.

Where one Executor may prejudice the other, *& è contr.* 107

Executions.

By *Capi' ad ſatisfac'*, *Fieri fac'*, and *Elegit.* 105, 106
If the body be in execution, the plaintiffe cannot meddle with the goods. 105. but if he die in perſon, he may. 106
Capias ad ſatisfac' where it lyes againſt an Executor, *& è contr.* 105, 106
When Execution ſhall be againſt an Executor or Adminiſtrator *de bonis propr' & è con.* 106, 107
A releaſe of all debts is good to diſcharge a man in Execution, but ſo is not a releaſe of Actions. 107
Execution after Execution. *ibid.*
Where the Sheriffe is compelled to ſell the goods taken in Execution, by *vendi expenas.* 107, 108
The Parſons Tithes ſequeſtred by a *Fieri facias de bonis Eccleſiaſtic.* 108

After

After Judgement if the party ſell his lands, they are lyable to execution. 109
How execution ſhall be done, if the Sheriffe have ſeverall *Elegits* at one time. *ibid.*
Annuity and Rent is extendible. 110
What Lands are ſubject to extent upon *Elegit*. *ibid.*
Execution cannot be ſued againſt the Heire during his minority. *ibid.*
Within what time execution is to be ſued upon a Judgement, without a *Scire facias*. 110
The power of the Sheriffe in ſerving of an execution. 111

Exemplification.

Where Records, or Deeds ſhall be exemplified, and where not. 220

Fine to the King.

When to be paid upon an Originall. 24
Upon Actions *vi & armis & contr. pac'*, and other Judgements. 48
In the Kings-Bench is paid upon the firſt entrance into ſuit. 369
Upon Indictments, is at the diſcretion of the Juſtices. 405

Fines levyed.

The courſe of ſerving of a Fine. 58
Upon a fine a *Feme covert* is to be examined by a Judge. 58,60
The maner how to be ſued out. 61

Fees.

Prothonotaries Fees. 151. to 160
Fees of Writs and entries of them. 160. to 163
Prothonotaries Clerks Fees. 163, 164,165
Prothonotaries Clerks Fees for Informations onely. 165,166
Fee to the ſecond Prothonotaries Clerk onely. 166
Fees to the Secondaries of the three Prothonotaries. 166,167
Fees belonging to the Sheriffe. 400. to 405
Fees to the Clerk of the Peace. 405, 406
Fees of the Cl. of Aſſizes. 408,409
Fees for proving of a Will. 410
Fees for obtaining of a Ward. 417
Allowances for Knights, and Burgeſſes of Parliament. 424
Fees in the Court of Marſhalſey. 431

Forfeiture.

Upon Outlawry. 14

Grants

Of Annuity by the King muſt expreſſe in the Grant by whoſe hands he ſhall receive it. 63

Grand Cape.

For not Appearance, avoided, for *Non summon.* by the Sheriff. 115

Habeas Corpus.

How to charge a Priſoner in the Fleet in Execution. 32
Corpus cum cauſa to remove a ſuit out of a baſe Court. *ibid.*

Imparlance.

Upon every Imparlance a Rule muſt be given to plead by a day. 15

Furours.

One Knight muſt be retorned a a Jurour againſt a Noble man. 35

Injunctions.

For preſervations of poſſeſſions, conditionall that the party hath been in peaceable poſſeſſion certaine years, and that his Intereſt is not determined by ſurrender or forfeiture. 190
Not to be granted upon a ſurmiſe in the bill, but upon matter in the defendants Anſw. 196
Untill Anſwer and further Order. 197
Upon a Contempt. 197,203
Where for ſettling of poſſeſſions. 197
Are to be inrolled. 198

Impriſonment.

For a Contempt. 173
For breach of a Decree. 202,203

Iſſue.

The maner of joyning of Iſſ. 127

Judgement.

Arreſted through the indirect carriage of Attournies. 40, 41
After a year and a day there muſt be a *Scire fac'* before execution can be taken out. 33
Arreſted by the Court for matters in Law. 36,37,38,39
By *Nihil dicit.* 9
The maner of acknowledging ſatisfaction upon a Judgement. 91
In *Detinue.* 103
Upon a *Devaſtavit* retorned. 107

Licence of Alienation.

For Land in *Capite* upon a recovery. 57
Upon a Fine levied. 60
How to be ſued forth. 61
Miſnomer. 69

Non-ſuit.

After full evidence. 21

Obligation.

After raſure of it, a man may plead *Non eſt factum* to it. 94

Ordinances.

Againſt Law or Prerog', void. 236
Made for Impriſonment by Corporations voide. 237
Made for laying Impoſitions, Fines, Amerciaments, and putting Offices upon the ſubjects, void. 237
Ordinances made by Corporations are to be approved by the chiefe Juſtices. 239

Outlawry.

The manner of ſuing a man to Outlawry in London. 6,7
Sooner in London then in other Counties. 8
Perſons outlawed may maintaine actions. 24
Outlawry in a County Palatine, is not pleadable at Weſtmin. 25
The courſe to reverſe an Outlawry, is by Error, or pleading the Generall pardon. 25,26
Muſt be pleaded and ſhewed *Sub pede ſigilli.* 209
What the Sheriff is to doe upon a ſpeciall *Cap' ut'* after Judge'. 27
Women outlaw'd called waive. 28

Parliament.

Acts of Parliament ſhould be kept in the Chapell of the Rolles. 419
The power of Parliaments. 420
The Convocation houſe no part of the Parliament. 422
The forme and ſummons of Parliament of Kn. and Burg. 421

Partition.

What it is. 124
The Declaration in Writ of partition, muſt be *Inſimul, & pro indiviſo.* *ibid.*
The Judgement in Partition. 125
Of a Manor to which Advowſon is appendant, the eldeſt ſiſter ſhall firſt preſent. 125
How to be done by the Sheriff upon a Judgement in a Writ of Partition. *ibid.*
Equall, bindes all parties. 126

Petition.

No Injunction or finall Order is to be altered upon a Petition. 195
Depoſitions of witneſſes or Commiſſions, are to be ſuppreſſed upon a Petition preſented. *ibid.*
Every Petition to be ſubſcribed by the Six. Clerk, before it be preſented to the Chancellor. 234

Pleadings.

After Imparlance, the defendant is to plead within 9. or 10. daies of the Terme following, elſe coſts to be. 10
Non Comp', where a good plea. 14
Speciall Pleas muſt be under Councells hand. 16,132
Generall Pleas good, by putting the defendants Attornies hand to the other Attornies book. 16
After a ſpecial plea pleaded, a plea in abatement is not good. 70
Unor' priſ'. 95

Nul tiel Record. 95
Licenec. 130
Scandalous pleas, are to be taken off the file. 214
Stat' of 21 *Jac'* of Limitation. 98
De injur' ſua propr'. 126, 127

Priviledge.

A *Femm Covert* ſhall have no priviledge in Chancery. 197
Clerkes of the Chancery are to be ſued onely there. 187

Procedendo.

A Judges hand muſt be to a *Hab' Corp'*, and to a *Procedendo.* 32

Recognizances.

What are not to be inrolled after one yeare. 214
What are not to be inrolled within a yeare. 216
To be inrolled within convenient time by the Cl. of the Inrol' 217
Taken in Chancery, in what maner to be ſued. 240, 241

Records.

How they are to be made up. 21

Recovery.

The manner of ſuing a common Recovery. 56
Upon ſingle and 2^le. voucher. *ib.*
By *Dedimus poteſtatem*, how to be proceeded in. 46
The Writ of Entry and ſeiſine with the Returnes to be exemplified. 58

Regiſter and *Orders*

Is in the late Order alwaies to make mention of the Order laſt before. 198, 226
Explanation of Orders is to be done in publick. 199
The Regiſter is not to deliver an Order to any of the parties without keeping a copy of it. 199
Is to draw up Notes to enforme the Court. *ibid.*
Is to uſe all convenient brevity in the drawing up of Orders. 226
Is to certifie within 14. daies after every Terme what References depend before the Maſters. 231

Releaſe.

Of Errors, when and where needfull. 48
Of Actions perſonal and reall, is a good bar in Writ of Annuity. 63

Replication

When Repli. is to be put in. 180

Reference and *Reports.*

Not after Examination of Witneſſes. 205
The Report of a Maſter, of no reſpect when it exceeds the Order of Reference. *ibid.*
What matters are fit for a Reference. 206, 231
Of inſufficient Anſwers. 206, 207
Of matters of Accompt. 207, 231
A Reference may be removed, for a wilfull or groſſe delay. 230

Returne of the Sheriff.

If a *Devaſtā'* be returned againſt one Executor, and he dyeth, the other

other is not to be charged for that *devaſtavit*. 107

Scire facias.

Upon a Recovery in a Writ of Annuity. 63

Sheriffes

May ſum' a Jury out of a Lib' 32

Sequeſtration.

After a ſitting of all proceſſe of contempt. 197

Of Lands upon a Decree of rent or money. 204

Summons and Severance. 69

Sub Pœna.

Againſt Witneſſes. 21

Before a Bill exhibited. 169

To pay coſts muſt be perſonally ſerved. 171

What ſhall be a ſufficient ſervice of it. 172

To make a better Anſwer upon a Demurrer over-ruled. 176

The Wife is not to be ſerved without the Husband. 178

Supplicavit.

The maner of ſuing it forth. 243

Superſedeas.

The manner of ſuing it forth after a *Supplicavit*. 245

Is better to be ſued forth upon a *Supplicavit* in the Chancery, then in the Kings-Bench. 246

Tales.

De Circ' and how entered. 17,18

Non Tales de circ' at the Barre, but *Tales* onely. 18

The manner of the *Tales*. *ibid.*

Tender.

When a Tendor is to be pleaded. 16,95

Not after an Imparlance. 96

Tryal.

Notice muſt be given of a Tryall 8 daies before. 16

By *Proviſo*. 18

Travers.

Preſcription traverſed. 126,127

What matters are to be tra' 211

Treſpaſſe.

Severall Treſpaſſes in one declaration. 126

With *Continuando*. *ibid.*

De injur' ſua propr' where a good plea. 126,127

New Aſſignement. 128

For taking of goods. 128,129

By whom maintainable 128,129

Where the Action muſt be ſpecial. 129

A Verdict upon a tryall in treſpaſſe fit to be exemplified. 131

Two Judgements in treſpaſſe. 130

When the Writ generall and the Court ſpeciall. 131,141

Quare clauſum fregit. and the ſeverall declarations therein. 131

The *Venire facias* ſhall be where the treſpaſſe doth ariſe. 132

Againſt a Carrier. 132

Alibi warrantiz' cum perſona. 133

By Adminiſtrators. *ibid.*

Of Aſſault and Battery. 134

Mal-

Mal' man' imposuit, where a good plea. 134,135

Trover and *Conversion*.

Damages only to be recovered. 149
There must be a demand in Trover. *ibid.*
No Wager of Law lyeth by the defendant. *ibid.*
Sale in Market overt alters the property of the goods. 150

View.

View after issue joyned. 116
Upon issue joyned both parties may pray a Writ of View severally. *ibid.*

Venire facias.

Where it shall arise in the proper County. 17
De proximo Hundredo. 17, 89
To the Coroners. 18,75
The maner how returnable. 20,21

Wager of Law.

Where the defendant may wage his Law. 50,137
Where not. 50,102
In what Actions wager of Law lyeth. 51,137
Who shall wage L. who not. 52,69
Adjornment 15. daies for wager of Law. 53,113
The manner how wager of Law is. 53,54
Where in a reall Action. 54
The maner of entry of the Judge' upon failer of the Law. 55
Upon *Assumpsit* in London. 373

Witnesses.

Examined *in perp' rei mem'* are not to be published during their lives. 182,187,189
Examined in Court. 183, 224, 225
Not to be examined by Com' before a *Sub pœna* be served to rejoyne. 183
No Witnesses to be examined after Publicat', but by order upon an *Affidavit*. 185,189
Ad informa' conscientiam Judic'. 186

Writs.

How many defendants may be in one Writ. 1,5
The forms of severall *Precip'*. 2,3,4
Writs must expresse the Towne, County, and defendants addition. 2
All Originall Writs issue out of the Chancery. 147
Judiciall Writs out of severall Courts. 146
Of *Ne exeat Regnum*. 215
What Writs shall not issue forth except signed under the Chancellors or Attournies hands *ibid.*
Of *Supplicavit*. 216,243
Writs and Certificates to be filed at the Rolles. 217
De executione Decreti. 227
Superseas upon a *Supplicavit*. 245

Usury. 93, 49

The

The foure Termes, *with their* Returnes.

Hillary Terme beginneth *January* 23. and endeth *February* 12.

Returne Dayes, or, Eſſoine Dayes.		Exception day.		Returna Brevium.		Appearance dayes.	
Octabis Hill.	Jan. 23	Jan.	24	Janua.	25	Jan.	26
Quind. Hill.	Jan. 27	Jan.	28	Janua.	29	Jan.	30
Craſt. Purif.	Feb. 3	Febr.	4	Februa.	5	Feb.	6
Octab. Purif.	Feb. 10	Febr.	11	Februa.	12	Feb.	13

Eaſter Terme begins *April* 30. and endeth *May* 26.

Quind. Paſch.	Apr. 30	May	1	May	2	May	3
Tres Paſch.	May 7	May	6	May	7	May	8
Menſe. Paſch.	May 12	May	13	May	14	May	15
Quinq. Paſch.	May 19	May	20	May	21	May	22
Craſt. Aſcenſ.	May 23	May	24	May	25	May	26

Trinity Terme begins *June* 13. and endeth *July* 2.

Craſt. Trin.	June 9	June	10	June	11	June	12
Octab. Trin.	June 16	June	17	June	18	June	19
Quind. Trin.	June 23	June	24	June	25	June	26
Tres Trin.	June 30	July	1	July	2	July	3

Michaelmas Terme begins *October* 9. and endeth *November* 28.

Octab. Mich.	Octob. 6	Octob.	7	Octob.	8	Octob.	9
Quind. Mich	Octob. 13	Octob.	14	Octob.	15	Octob.	16
Tres Mich.	Octob. 20	Octob.	21	Octob.	22	Octob.	23
Menſe Mich.	Octob. 27	Octob.	28	Octob.	29	Octob.	30
Craſt. anim.	Novemb. 3	Novemb.	4	Novemb.	5	Novemb.	6
Craſt. Mart	Novemb. 12	Novemb.	13	Novemb.	14	Novemb.	15
Octab. Mart.	Novemb. 18	Novemb.	19	Novemb.	20	Novemb.	21
Quind. Mart.	Novemb. 25	Novemb.	26	Novemb.	27	Novemb.	28

The

The Law-dayes in the Courts of

Arches,
Audience,
Prerogative,
Consistory,
Delegates,
Admiralty.

In *Hillary* Terme,	S. *Hillary*	13	January.
	S. *Wolstan.*	19	
	Conversio S. Pauli	25	
	S. *Scholastic.*	10	February.
	S. *Valentine*	14	
In *Easter* Terme,	*Quind. Pasc.*	28	April.
	S. *Gordian*	10	May.
	Ascension Day	22	
In *Trinity* Terme,	*Corpus Christi*	12	
	S. *Botolph*	17	June.
	S. *John Baptist*	24	
	S. *Paul.*	30	
In *Michael.* Term,	S. *Faith*	6	October.
	S. *Edward*	13	
	All Soules	2	November.
	S. *Martin*	11	
	S. *Edmond.*	20	

And when, and where, their severall Courts are severally and respectively kept, you shall read in the common Almanack at large.

FINIS.

Ex. G. a a

mistake in paging 246-349